



the weekly

**WE DON'T
NEED NO
STINKIN'
CONGRESS!**

Obama's regulatory rampage
ADAM J. WHITE

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Oral Argument

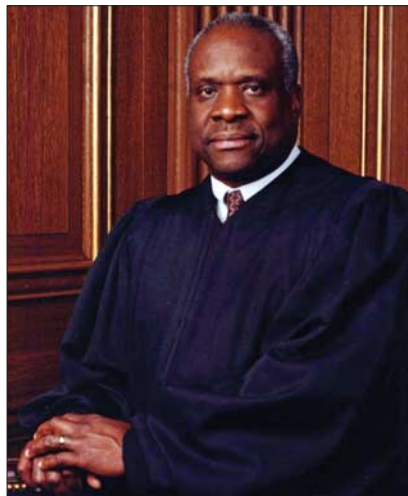
When Greta Garbo appeared in *Anna Christie* (1930), her first movie with sound, MGM breathlessly advertised the film by announcing that “Garbo talks!” This made a certain sense at the time: Garbo was a big star and was Swedish, and there had been uncertainty about whether her accented English would translate successfully to the screen. By contrast, it is a little more difficult to understand the front-page story last week in the *Washington Post* (“The seven-year silence ends—but what did the justice say?”) when Justice Clarence Thomas spoke from the bench for the first time since 2006.

First, a couple of facts. Thomas is the rare justice who almost never says anything when the Supreme Court hears oral arguments. This is in marked contrast to recent custom, and certainly sets him apart from some of the Court’s well-known chatterboxes—notably Justices Antonin Scalia and Elena Kagan—who enjoy mixing it up with advocates, asking provocative questions, and scoring rhetorical points. For the record, Thomas has said that he thinks it’s rude to interrupt lawyers, who have limited time to make their case; and anyway, most justices have already made up their minds by the time oral arguments are heard.

The other fact is that no one is quite sure what, exactly, Thomas said on January 14: Several people were speaking at the same time, and nobody, including the Court’s reporter, knows what Thomas said beyond the official transcript: “Well—he did not—.”

There seems to have been a joking remark about the qualifications of lawyers trained at Yale Law School, and Thomas is known for his ambivalent attitude toward his alma mater.

But why did these four garbled words merit a front-page story in the *Post*, an equally detailed ac-



Justice Clarence Thomas

count in the *New York Times*, even a post and discussion on the Yale Law alumni blog? The answer, alas, is that the story conforms to the widespread notion on the left that Justice Thomas doesn’t participate in oral arguments because (a) he’s unable to do so because he isn’t very smart, and (b) as a black conservative he’s a peculiar character, and here’s another symptom.

Unfortunately, this tells us considerably more about his detractors than about Justice Clarence Thomas. For the fact is that lively argument be-

tween bench and bar on the Supreme Court is by no means a great tradition, or even a common occurrence in the Court’s long history.

In its early years, the Supreme Court was largely dependent on oral arguments in place of briefs, and so justices were inclined to ask questions and, in effect, debate with advocates. But after the 1830s, the Court adopted more businesslike practices, and oral exchanges between justices and lawyers declined.

Official transcripts of proceedings date only from the era of the Warren Court, but there is little record—in memoirs, historic monographs, or journalistic accounts of Court proceedings—of such giants as Louis Brandeis or Oliver Wendell Holmes, for example, engaging advocates during oral argument. Indeed, the preeminent liberals on the modern Supreme Court—William O. Douglas and William J. Brennan—were, like Clarence Thomas, deliberately circumspect during proceedings.

Which proves nothing, of course—except that some modern justices, for various reasons, like to engage in rhetorical duels with lawyers, but Justice Thomas prefers to keep his mouth shut and let the advocates make their case. There is ample precedent for such behavior; you could even argue that Thomas is more typical of justices than not. Which is proof, in THE SCRAPBOOK’S view, of Clarence Thomas’s good manners, and the dubious instincts of an adversarial press that fails to recognize a great jurist when it sees one. ♦

For the Children

In arguing for stricter gun control, the White House has a fundamental problem: The facts simply aren’t on its side. Gun ownership has increased in this country for decades

even as gun violence has fallen. And the remedies currently being discussed are either ominous—encouraging doctors to harass their patients about gun ownership—or have been tried before without demonstrable success. Both the Columbine, Colo.,

spree and the 1998 school shooting in Springfield, Ore., that killed 2 and wounded 25 occurred when bans on assault weapons and high-capacity magazines were in effect. With the White House pushing a liberal gun control agenda that’s out of step with

even a large swath of the Democratic base, it quickly became evident that the administration's entire strategy boils down to accusing its opponents of not caring enough about children.

The night before the Obama administration announced its gun proposals, it released a series of letters written by children asking the White House to do something about guns. As if this wasn't enough, Obama invited only children—not members of Congress—to the signing of his executive order on guns the next day, where he proceeded to hug them for the cameras. He then followed that up by putting footage on the White House's YouTube channel of children reading their gun control letters to the president. The videos were taken against an austere black background; had the children been holding up a copy of that day's newspaper, you might have mistaken them for hostage videos.

Were these precocious activists worth listening to? You be the judge: "Please don't let people own machine guns or other powerful guns like that," writes 8-year-old Grant. Another child, an 11-year-old named, yes, Julia, writes: "I know that laws have to be passed by Congress but I beg you to try very hard to make guns not allowed." We do hope that someone at the White House took the time to inform these two children that machine guns have been illegal to own, with a few incredibly narrow exemptions, since the early part of the 20th century and that the Second Amendment flatly states the federal government can't "make guns not allowed." (In her defense, young Julia attends school in the District of Columbia, so she's surrounded by adults who have taught her it's okay to disregard the Constitution.)

But as reported by the *National Journal* under the headline "Obama's New Frame: Gun Rights vs. the Right to Life," Obama's obnoxious grandstanding with regard to children may have reached its zenith with this comment: "That most fundamental set of rights to life and liberty and the pursuit of happiness—



fundamental rights that were denied to college students at Virginia Tech, and high school students at Columbine, and elementary school students in Newtown, and kids on street corners in Chicago on too frequent a basis to tolerate, and all the families who've never imagined that they'd lose a loved one to a bullet—those rights are at stake."

To summarize, a few days shy of the 40th anniversary of *Roe v. Wade*, the president who voted against the "Born Alive Infant Protection Act" because not allowing infanticide isn't sufficiently pro-choice is now saying that opponents of rash and ineffective gun-control measures aren't pro-life. Perfect. ♦

Send Lawyers, Guns, and Money—but Mostly Lawyers

Last week brought more gruesome headlines from Africa, with a botched raid by the Algerian military to free hostages seized by al Qaeda-linked terrorists at a natural gas plant in the Sahara desert. Meanwhile, French troops in neighboring Mali were encountering better trained and better supplied enemies than anticipated in their offensive against the Al Qaeda in the Islamic Maghreb militants occupying the north of that country.

So you can imagine THE SCRAP-

BOOK'S relief upon learning that one of the continent's fundamental problems is being tackled at last. We refer, of course, to Africa's shortage of lawyers. Thankfully, the *American Lawyer* is on the case.

The magazine reports with alarm in its December issue that

At last count, Ethiopia had 434 lawyers, or about as many as Davis Wright Tremaine. Niger has 77 lawyers, which is fewer than Baker & McKenzie's 13th-largest office. Both nations have about one lawyer for every 150,000 people. ... To get an idea of how low that figure is, imagine if the United States had to operate its entire legal apparatus with only the 2,100 lawyers who joined the Illinois bar on November 1.

Yes, imagine! Microsoft's general counsel "has made legal capacity-building in developing nations a pro bono priority." Because, he says, "In many countries there are not enough lawyers, and that's the fundamental problem."

Just what Africa needs, we're sure you'll agree—more lawyers! ♦

Sentences We Didn't Finish

'I'd love to see the president launch us on an aspirational journey. My choice would be to connect every home and business in America to the Internet at one gigabit per second ...' (Thomas L. Friedman, *New York Times*, January 15, 2013). ♦

Correction

A friend writes reprovingly of the reference—in our profile two weeks ago of Ken Myers, founder of *Mars Hill Audio Journal*—to "Bach's motet *Jesu, meine Freunde*. I don't think Bach ever wrote anything entitled or starting 'Jesus, my friends.' It's *Jesu, meine Freude*, i.e., 'Jesus, my joy.'" Ach, so. ♦

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Old Volvos Never Die

Late in the afternoon on New Year's Eve, my wife Jill and I were driving through Vienna, Virginia, toward Tysons Corner when we found ourselves in front of, and then beside, and then right behind an old gray Volvo wagon. The car caught our eyes, and quickly we realized why, for it wasn't just another car on the road but a car we'd once owned—from 1987, to be precise, when we bought it new, until December 2011. That's not a misprint: The car was ours for more than 24 years.

It's not as though we bought the wagon intending to keep it for a generation. No, we bought it having decided, as people do when they buy cars, that it was the right one for us.

With a 1-year-old, Katherine, to carry about the city, Jill wanted the safest wagon around, and Volvo had a reputation for making heavy, sturdy vehicles. While I was reluctant to own a car made by a company headquartered in a socialist country, I agreed to trade in our four-door sedan for the gray 1987 GLE 740, knowing that Jill was going to be doing more of the driving anyway.

In 1998, we decided we'd become a two-car family. Jill got the new car (a "light" truck, the safety argument by this time requiring a still-heavier vehicle), and I got the hand-me-down Volvo, which had more than 100,000 miles on it, and with which we had been utterly satisfied.

It was then that it began to occur to me that the car I was driving daily was more than 10 years old, and that I had never before owned a car, bought

new or used, for that many years. Not that age alone meant anything about how the car performed; in fact, it was continuing to perform well.

But it was also continuing to get older, and nothing could stop that. By the early 2000s the wagon had actually acquired a name: We called it "Old Gray"—age being what distinguished it from most of the cars it shared the roads with.



I stuck with Old Gray for several reasons. The car had no debt on it, the original note having been paid off long ago, a welcome event. Also, it was perfect for the driving I did—in and around Washington, seldom long distance. Its natural speed—slow—meant it never violated the speed limits. And, precisely because Old Gray was old, I didn't worry too much about scratches or dents endured in parking garages. Then, too, manufactured in the era it was, Old Gray was simple to understand and operate—something, by the way, that cannot be said about most new cars. Finally, the car, well used to my presence in the driver's seat, had come to fit me just right.

But with advancing age came prob-

lems. Over the years I'd enjoyed learning how to order the odd Volvo part from a yard somewhere. But several years ago it took two months to find a replacement for the glove compartment, a reminder of the car's mortality.

And, of course, there were engine problems. Starting about five years ago, Old Gray had more and more of them. And then, one day in the late summer of 2011, it gave out while I was driving home from work, right before I was to cross the Roosevelt Bridge into Virginia. The old wagon just rolled to a stop.

To get it going again would require a new fuel pump. But at some point, I knew, it would also need a new transmission. Oh, and there was the paint job, long overdue. The car sat in my driveway during the last months of 2011 as I considered what to do. In the end, I decided not to trade in Old Gray, but to give it to a nonprofit.

I wanted the car repaired, and the one nonprofit I knew would fix it was a local public high school that uses donated vehicles to train students in repairing cars and then selling them. "This is the best place for it," the teacher in charge told me, explaining the program's "300-point inspection" process, and I believed him. I had a AAA tow truck leave the wagon in the school parking lot and signed the papers in the teacher's office nearby.

We didn't expect to see Old Gray again. But there in Vienna on New Year's Eve, in one of life's strange but happy surprises, we did. The car had been repaired. And sold. And I could see that the old wagon, still sporting the Atlanta Braves bumper sticker I'd given it almost a generation ago, had found new life—as a pizza delivery mobile.

TERRY EASTLAND

The Republican Party in Opposition

In March 1975, with the United States in post-Watergate disarray at home, stunned by repeated diplomatic defeats at the United Nations, and about to suffer the humiliation of seeing an ally at whose side we had fought for many years be overrun by the North Vietnamese Communist Army, Daniel Patrick Moynihan asked: “What then does the United States do?”

His answer, in an article in *Commentary* magazine:

The United States goes into opposition. This is our circumstance. We are a minority. We are outvoted. This is neither an unprecedented nor an intolerable situation. The question is what do we make of it. So far we have made little—nothing—of what is in fact an opportunity. We go about dazed that the world has changed. We toy with the idea of stopping it and getting off. We rebound with the thought that if only we are more reasonable perhaps “they” will be. . . . But “they” do not grow reasonable. Instead, we grow unreasonable. A sterile enterprise which awaits total redefinition.

How to achieve a “total redefinition” through opposition? First, “recognize that there is a distinctive ideology” at work on the other side. Such a recognition allows one to “be in a position to reach for a certain coherence of opposition.” And that coherence of opposition would revolve, Moynihan suggested, around making the case for America as a nation worth defending: “It is past time we ceased to apologize for an imperfect democracy. Find its equal.”

In particular, unapologetic opposition means openly and aggressively making the case for free markets as unequaled engines of economic opportunity and growth; it means advocating government policies that are “limited in their undertakings, concrete in their means, representa-

tive in their mode of adoption, and definable in terms of results”; and it means showing a commitment to “speaking for political and civil liberty, and doing so in detail and in concrete particulars.” Making these arguments would be “liberating” for American diplomats and for American foreign policy, Moynihan claimed. “It is time, that is, that

the American spokesman came to be feared in international forums for the truths he might tell.”

Today it is the Republican party that is in opposition. Not entirely, of course. There are 30 Republican governors, many of them governing successfully. And Republicans maintain control of the House of Representatives. On the other hand, a Democratic president has just been reelected with a majority of the popular vote for the first time in almost 70 years. Republicans lost 25 of 33 Senate races. And Democrats received more popular votes in House contests nationwide than did Republicans. So opposition it is.

But opposition, as Moynihan pointed out, can be liberating. It allows for the spirited defense of principle, as Moynihan would show when he became ambassador



Daniel Patrick Moynihan at the U.N.

to the United Nations a few months after the *Commentary* article. And it allows for a major rethinking of policy, as Ronald Reagan would demonstrate the following year in his first presidential bid.

Opposition can also be spine-stiffening. Republican self-criticism is necessary and healthy—but all things in moderation. Republicans can and should say, with considerable justification and only a bit of bravado: It is past time we ceased to apologize for an imperfect political party. Find its equal. Probably more than any other party in the world, the Republicans have in recent decades stood unflinchingly for the cause of liberty abroad, and, at home,

with a bit more uncertainty, for limited, constitutional government and for the principle that government exists to serve free men and free markets, not the reverse.

Surely, then, it is time for Republican spokesmen to come to be feared in our national forums for the truths they might tell. Truths about the consequences of our weakness abroad and of our debt at home. Truths about the scope of reform necessary to improve health care. Truths not just about liberalism but about crony capitalism, not just about big government but about big business and big education.

Things never turn around immediately. Despite Moynihan's heroic efforts, the United Nations remained a place of infamy. Gerald Ford defeated Reagan and was in turn defeated by Jimmy Carter in the 1976 election. The late '70s were a grim time.

But six years after Moynihan's article, Ronald Reagan was sworn in as president. And here too is a lesson. Republicans need to show the spirit of Moynihan. But they also need to aim for the greater achievement of Reagan. Moynihan's eloquence at the U.N. wasn't enough to stem and reverse the international tide. His victory over Bella Abzug in the 1976 New York Senate Democratic primary didn't reshape that party at the national level.

Reagan dared to challenge an incumbent president of his own party. He dared to challenge the establishments of both parties. He thought big, acted boldly, and ultimately won.

So, as Republicans consider their situation halfway through the Obama presidency, they might want to turn for inspiration to Reagan's impromptu remarks when President Ford invited his defeated rival to say a few words at the close of the 1976 Republican convention:

If I could just take a moment; I had an assignment the other day. Someone asked me to write a letter for a time capsule that is going to be opened in Los Angeles a hundred years from now, on our Tricentennial.

It sounded like an easy assignment. They suggested I write something about the problems and the issues today. I set out to do so, riding down the coast in an automobile, looking at the blue Pacific out on one side and the Santa Ynez Mountains on the other, and I couldn't help but wonder if it was going to be that beautiful a hundred years from now as it was on that summer day.

Then as I tried to write—let your own minds turn to that task. You are going to write for people a hundred years from now, who know all about us. We know nothing about them. We don't know what kind of a world they will be living in. . . .

And suddenly it dawned on me, those who would read this letter a hundred years from now will know . . . whether we met our challenge. Whether they have the freedoms that we have known up until now will depend on what we do here.

Will they look back with appreciation and say, "Thank God for those people in 1976 who headed off that loss of

freedom, who kept us now a hundred years later free, who kept our world from nuclear destruction"?

And if we failed, they probably won't get to read the letter at all because it spoke of individual freedom, and they won't be allowed to talk of that or read of it.

This is our challenge; and this is why here in this hall tonight, better than we have ever done before, we have got to quit talking to each other and about each other and go out and communicate to the world that we may be fewer in numbers than we have ever been, but we carry the message they are waiting for.

We must go forth from here united, determined that what a great general said a few years ago is true: There is no substitute for victory, Mr. President.

Republicans are in opposition. This provides opportunities for clear speech and bold proposals. It implies also the responsibility to do what they can to mitigate the damage of the next four years. But, at the end of the day, there is no substitute for victory.

—William Kristol

The Iraq Syndrome

It is not possible—at least not yet—to program a computer to predict all the consequences of adopting one foreign policy over another. Policymakers therefore tend to act with one eye cocked on the rearview mirror, making decisions based on what has worked and, especially, what has not worked in the past. A major foreign policy blunder can thus produce a lurch in the opposite direction—which often has equally dangerous, if different, consequences.

The classic case of American policymakers overcompensating for past mistakes is the Vietnam war. President Lyndon Johnson and his aides had been seared by the experience of appeasement in the 1930s, when they were in their formative years. Determined not to allow "another Munich," they instead became embroiled in a long, frustrating, costly, and ultimately losing war.

Today we are seeing another demonstration of the dangers of policymaking on the rebound. For Obama's older appointees—including Chuck Hagel and John Kerry—Vietnam was the cauldron in which their dovish views of foreign policy were forged. The lessons they thought they learned in Vietnam were reinforced with the war in Iraq.

For those who don't remember Vietnam, the Iraq war has allegedly shown the folly of military intervention, making them once bitten, twice shy about using force

in the Middle East. As a result, the “light footprint” is becoming as much of an intellectual straitjacket for President Obama as the “domino theory” was for LBJ.

This is not to suggest that Obama is a pacifist. He has shown his willingness to use force—but generally only in antiseptic ways, such as the drone strikes in Afghanistan, Pakistan, Yemen, and Somalia, which all but eliminate risks on our side. (The Osama bin Laden raid was a more risky decision, but it was only a quick in-and-out raid, not a prolonged intervention.) The problem with this approach is that there are sharp limits to what drones, and even commandos, can accomplish. They can kill a few terrorist leaders, but they cannot prevent their replacement with equally malign successors. That would require a more prolonged intervention that Obama will not countenance—perhaps rightly.

The one brief spasm of somewhat more extensive military activity initiated by Obama occurred in Libya. But, like the drone strikes, it was designed in such a way as to limit American responsibility—no boots on the ground, and even in the air the allies were put in the lead as soon as possible in keeping with the administration’s “lead from behind” doctrine. Once Muammar Qaddafi was overthrown, the administration eschewed an active role in shaping a new, democratic Libya.

The pleas of Libyan leaders for more aid to build up their armed forces and thereby end their reliance on militias were, for the most part, ignored. This fostered the chaotic conditions that led to the death of Ambassador Christopher Stevens and three other Americans last September. Moreover, in abandoning Libya, the administration effectively handed the keys to Qaddafi’s stockpile of NATO-grade small arms over to smugglers who have been channeling these weapons into Gaza. And it is a combination of Qaddafi’s weapons and former mercenaries that have turned much of Mali into a zone controlled by Al Qaeda in the Islamic Maghreb.

It is not only in post-Qaddafi Libya that the dangers of a hands-off policy are becoming apparent. Syria is even worse. It has been ravaged for nearly two years by a civil war that has already claimed at least 60,000 lives. As the fighting continues, the prospects of reestablishing stability in the wake of the violence diminish by the day. The most likely outcome now is a collapse of the country into different tribal and ethnic fiefdoms, with al Qaeda-linked extremists likely to exert significant sway. The conflict has already spilled over into neighboring states, sparking sectarian fighting in Lebanon between Shia and Sunnis, enticing Al Qaeda in Iraq to expand its operations across

the border, and flooding Lebanon, Turkey, and Jordan with refugees.

At least some of these parlous consequences might have been avoided if the Obama administration had taken a more active role from the start—by, for example, declaring a no-fly zone and providing arms to the more moderate rebel factions. Such a proactive policy might have hastened Syrian dictator Bashar al-Assad’s downfall, shortened the term of the conflict, and increased the chances of assembling a new government that could control its own territory. But Obama has limited U.S. involvement to a small

amount of humanitarian aid—and a large number of statements denouncing Assad. The president is not doing much to back up his words because the last thing he wants is to get sucked into another complicated Middle Eastern conflict. No doubt memories of Iraq shape the White House’s reticence on Syria.

The specter of George W. Bush’s warmaking strongly influenced Obama’s decision to withdraw all American troops from Iraq at the end of 2011. The ostensible cause was Prime Minister Nouri al-Maliki’s refusal to grant U.S. forces the legal immunity demanded by the Pentagon. But, in reality, Obama did not really try all that hard to break the



Won't you be my secretary of state?

negotiating logjam.

Because the United States has pulled out of Iraq, we have lost leverage to shape its future—which is looking ever bleaker. Maliki is pursuing a vendetta against Sunni politicians that is leading to a revival of Al Qaeda in Iraq and a renewal of its campaign of terror. Tensions with the Kurds are also high, leading to fears of another Arab-Kurd war. Meanwhile, Iranian influence has grown in Iraq, so much so that Maliki has allowed Iran to use Iraqi airspace as a weapons supply line for the Syrian regime. American entreaties to stop the flights have been ignored.

This is a stark warning of the dangers of pulling U.S. troops out before their job is done. And yet by all indications the president is fully prepared to make the same mistake with Afghanistan. Recent reports suggest that administration plans for a post-2014 troop contingent are falling fast. From 20,000 troops (the number deemed prudent by military commanders), the debate is now about 10,000, 6,000, 3,000, and of late even the “zero option.” It is hard to see what could possibly make policymakers think that the Afghan National Security Forces—which cannot prevent the emergence of Haqqani sanctuaries an hour’s drive from Kabul even with the aid of 66,000 U.S. troops—will be able to keep the peace with few, if any, outside helpers. It seems that policymakers are more focused on the

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costs of a continuing commitment—even if they are likely to be much lower than they were in the past—than they are on the costs of a premature departure.

And then there is Iran. The president and his new cabinet have made clear their extreme aversion to war with the mullahs. They have even been reluctant to impose overly strong sanctions. Chuck Hagel voted against unilateral sanctions, and Obama only signed them into law when forced to do so by overwhelming majorities in Congress. Obama's preference was, and still is, to talk, but attempts to negotiate with the mullahs have, predictably, gone nowhere.

Why, after all, should Iran's supreme leader, Ayatollah Ali Khamenei, negotiate away his valued nuclear program when there is no realistic expectation that this administration would launch another preemptive war in the Middle East? Sanctions, which sting mainly the ordinary people, are unlikely to change the ayatollahs' minds. Only the credible threat of military force, including the threat of regime change, might be able to bring this crisis to a peaceful and satisfactory conclusion, but this administration has never been able to threaten Iran in a credible way because everyone, even in Tehran, knows how much Obama wants to avoid "another Iraq."

The broader problem is that the administration has a blinkered view of the historical record. It is true that we paid a heavy price for the last decade of interventionism, in lost and mangled lives and spent dollars, but we also could have derived considerable benefits from the emergence of moderate, pro-Western regimes in Baghdad and Kabul that, with a little support and encouragement, would cooperate fruitfully in the future with American interests. That possibility has already been squandered in Iraq and may be lost in Afghanistan. Meanwhile, Syria and Iran grow ever more dangerous, the former as it gets weaker, the latter as it grows stronger.

By ignoring the potential upside, and focusing only on the considerable downside, of American activism, President Obama has inaugurated a new era of retreat and retrenchment that may yet come back to haunt us in ways we can hardly imagine.

—Max Boot

The Nonexistent Red Line

Last week, we learned of a secret State Department assessment that forces loyal to Syrian president Bashar al-Assad had recently used chemical weapons. The State Department cable, signed by the

U.S. consul in Istanbul and based on interviews with doctors, defectors from the Syrian Army, and activists, made what one unnamed administration official called a "compelling case" that the Syrian military had used Agent 15, or BZ gas, in Homs last month against the Sunni-majority opposition. Nonetheless, within 24 hours, the State Department challenged the news report and the cable's conclusion, stating that it "found no credible evidence to corroborate or to confirm that chemical weapons were used."

It's hardly surprising the administration was eager to paper over a story that showed the cracks in its jerrybuilt Syria policy. After all, just last August Obama pledged that "seeing movement on the chemical weapons front, or the use of chemical weapons" by Assad would mean the Syrian dictator had crossed a "red line" and would trigger a U.S. response. If Assad had already used those weapons, that would mean Obama blinked.

The leak itself showed that even inside the administration there is a gnawing suspicion that the president's Syria policy has come up short. The president has let a humanitarian crisis grow to enormous proportions during the last 24 months. Further, Obama has squandered an opportunity to advance American interests by toppling Iran's only Arab ally, and has imperiled U.S. allies on Syria's borders by failing to contain a crisis that is spilling over into Turkey, Jordan, and Lebanon and may cause trouble for Israel as well.

The White House had previously bragged that in December, via private messages from Obama through the Russians and other interlocutors, it stopped the regime in Damascus from using chemical weapons. One senior defense official told the *New York Times*, "I think the Russians understood this is the one thing that could get us to intervene in the war."

But in congratulating itself, the administration unwittingly underscored the fact that it could have intervened at any point over the last two years, during which time Assad has slaughtered more than 60,000 victims. Last week alone, Assad's forces killed more than 100 people in Homs, who were shot, stabbed, and incinerated. Should we congratulate the Obama administration that they weren't gassed?

Also last week, 80 were killed and more than 150 wounded in a regime airstrike on the University of Aleppo. At one time it seemed that the use of fixed-wing aircraft against civilians, like the students and displaced persons camped out on the university grounds, constituted an American red line. After all, the difference between Qaddafi and Assad, said Secretary of State Clinton in explaining why the United States had joined the NATO action against the former and was content to sit back and watch the latter, was that the Libyan dictator was using airstrikes against his own people.

One problem with Obama's statement on chemical weapons last summer was that he was sending a message

to Assad that carnage up to that supposed red line was acceptable. But the red line itself was problematic. Given the limited flow of information coming out of Syria, it was always going to be difficult to confirm the use of chemical weapons. The conflicting signals from the State Department last week made the issue plain. “When this particular message came in from consulate Istanbul,” said a State Department spokesperson, we “concluded at the time that we couldn’t corroborate it; we haven’t been able to corroborate it since either.”

Sure, the opposition might submit evidence that they’d been gassed, but how would anyone know if they were telling the truth? How would you verify their stories, or authenticate YouTube videos of people vomiting, choking, and dying? The Syrian rebels have an interest, after all, in bringing the United States into the conflict.

In any case, as outgoing defense secretary Leon Panetta explained earlier this month, it turns out the United States would only send in troops to secure Syria’s chemical weapons stockpile *after* Assad fell. The concern, said Panetta “is what steps does the international community take to make sure that when Assad comes down, that there is a process and procedure to make sure we get our hands on securing those sites?” In other words, as long as Assad is still in power, the White House is not going to do anything about his arsenal.

And even if it wanted to, said chairman of the Joint Chiefs of Staff Gen. Martin Dempsey, how would it know when to move against chemical weapons? “You would have to have such clarity of intelligence,” said Dempsey, “persistent surveillance, you’d have to actually see it before it happened, and that’s—that’s unlikely, to be sure.” Therefore, said Dempsey, “The act of preventing the use of chemical weapons would be almost unachievable.”

In sum: The White House wouldn’t know if Assad were about to use chemical weapons, couldn’t be sure if he had used chemical weapons, and in any case isn’t going to do anything about chemical weapons until Assad leaves. In reality then, the president has no red lines for Assad.

Worse yet is what Obama’s empty bluster on Syria portends for the administration’s Iran policy. Obama says he means not to contain the Islamic Republic’s nuclear weapons, but to prevent Tehran from acquiring them. Actions, however, speak louder than words. His new cabinet picks, John Kerry, Chuck Hagel, and John Brennan, are all longtime advocates of engagement with rogue regimes—without any fallback plan in the predictable event that talking to the mullahs comes to nothing, as it has for more than 30 years. With his Syria policy, Obama is in effect telling the Islamic Republic that if engagement doesn’t work, if sanctions don’t make the regime reconsider, then he’ll do nothing to stop them.

—Lee Smith

America Needs Immigrants

By Thomas J. Donohue

President and CEO
U.S. Chamber of Commerce

When it comes to immigration, people are entitled to their own opinions, but not their own facts. And the facts are crystal clear: Our current system is broken. It’s not serving the interests of our economy, our businesses, or our society.

Our nation can’t compete and win without the world’s best talent and hardest workers. We can’t sustain vital programs for the elderly and the less fortunate without more employees—both low skilled and high skilled—to grow our economy and tax base. We can’t harvest our food, care for our sick, or sustain our military without immigrants and temporary workers.

America deserves a lawful, rational, and practicable immigration system that provides the labor we need at all skill levels, while protecting the rights of citizens, businesses, the undocumented, and those legally pursuing citizenship.

We must secure our borders and enable people and commerce to flow efficiently and lawfully in and out of our country. We’ve made significant progress by smartly deploying our technology, personnel, and programs along the border. Let’s build on that.

We need thoughtfully designed employment-based visa programs that would allow employers to use immigrant labor when U.S. employees are not available. Even with high unemployment, we have millions of job openings that go unfilled. Either people will come here to fill those jobs, or the companies will take all their jobs somewhere else. Our visa system should be tied to market demands and include provisions for high-skilled, seasonal, agriculture, and other areas where employers face demonstrated labor shortages. We also need to expand the number of green cards for foreign nationals who graduate from our colleges and universities with advanced degrees.

We need a workable, reliable national employee verification system. We are ready to move forward with the national E-Verify

system as long as there is strong preemption language for state and local laws, no obligation to re-verify the entire current workforce for private employers, and a safe harbor for employers acting in good faith.

Finally, we need to provide a path out of the shadows for the 11 million undocumented immigrants who live in the United States today. As we have this debate, let’s not forget who we are, or what this nation was built upon—the dreams and hard work of those who came here seeking a better life.

Immigration reform will be a top priority for the U.S. Chamber of Commerce this year. It’s a great opportunity to strengthen our competitiveness, attract and retain the world’s best talent and hardest workers, secure our borders, and keep faith with America’s legacy as an open and welcoming society.



U.S. CHAMBER OF COMMERCE
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Dead in the Water

The federal flood insurance fiasco.

BY ELI LEHRER



By almost any analysis, the National Flood Insurance Program (NFIP)—the recipient of a \$9.7 billion bailout in the wake of Hurricane Sandy—doesn’t work. It is poorly conceived, it’s terribly mismanaged, and it encourages harmful behavior.

Of course, the same can be said for dozens of other federal efforts. What sets the NFIP apart is that, in looking to address what was at the time a clear market failure, Congress created a program that has so influenced the course of society these past four and a half decades that getting rid of it would be nearly impossible.

Before Congress set up the NFIP in 1968, only a handful of very small insurance companies wrote flood coverage as part of conventional homeowners’ policies. Although a demand for flood insurance clearly existed, nobody would sell it. This was a

market failure as almost any economist would describe it. And it happened for several reasons.

Insurance works best when a large number of people who face similar but uncorrelated risks pool their risk together. But floods are heavily *correlated*. While they aren’t a serious concern in many parts of the country, they can be a constant menace in areas near river valleys or along coasts that face threats from tropical storms. In an era when small, local insurers that served one or two states provided most insurance, a single big flood could drive many of them out of business.

Not that the business of home insurance has ever been particularly lucrative. Over nearly any given 10-year period, the property and casualty insurance industry as a whole pays out in claims roughly as much as it takes in in premiums, and the home insurance business is one of the least attractive from an underwriting standpoint. Insurers earn their returns mostly by investing premium dollars in high quality, low-yield bonds. With very thin margins,

in those years when the business is profitable at all, the main attraction to insurers of offering home insurance—required of everyone who has a mortgage—is the chance to cross-sell more lucrative products, like investments, life insurance, and automobile insurance. Indeed, no company of any size sells *only* homeowners’ insurance.

Most important, the data that insurers needed to make good underwriting decisions about flood risks didn’t really exist at the time Congress created NFIP. Before air conditioning and the near-elimination of malaria-carrying mosquitos made them pleasant places to live, wet areas were mostly the domain of poor “river rats” who couldn’t afford homeowners’ insurance. Because the flow of water continually changes the contours of flood-prone areas, mapping such areas remains inherently difficult and expensive and was nearly impossible given the technology of the time. And it follows that the paltry returns they expected to earn on flood insurance offered little incentive for insurers to invest in and improve these systems.

Eli Lehrer is president of the R Street Institute and a contributing author to the new book Risky Business: Insurance Markets and Regulation (Independent Institute).

SCOTT BRUNDAGE

Government policy made things worse. Since the 1920s, nearly all states have passed laws to regulate how much insurers are allowed to charge. Although these laws have eased slightly since the 1960s—and vanished entirely in Illinois—they still make insurers very reluctant to take on new types of risks. They have a legitimate fear that state governments may not let them charge enough to cover their costs and, thus, face the no-win choice of either “nonrenewing” their customers or losing money.

Even worse, from the standpoint of any insurer contemplating entering the flood insurance business, Sen. Prescott Bush (father and grandfather of the Presidents Bush) succeeded in convincing his colleagues in Congress to pass a law creating a flood insurance program in 1956. While the program was never funded, its very existence in statute provided a powerful reminder that the federal government planned to nationalize flood insurance and thus was a disincentive for anyone who might otherwise have thought of investing in the market.

This combination of the nature of the flood risk, the insurance business, the limitations of technology, and the regulatory climate made it impossible to provide flood insurance in most of the country. Spurred on by the GI Bill, the new interstate highway system, and the FHA mortgage insurance created by the Housing Act of 1949, an exploding population began moving into brand new suburbs, many of them constructed in naturally flat flood-prone areas where building was easy.

Flood damages began to rise, and Hurricane Betsy in 1965, the first post-World War II storm to do more than \$1 billion in damage, provided an additional potent incentive for the federal government to do *something* about flood insurance.

On paper, the flood insurance law passed by Congress in 1968 looked sensible: It required participating communities to take steps to avoid building in disaster-prone areas, left requirements loose enough that private companies could take on risk if they wanted to, assured that rates on

all future construction would be “actuarially adequate,” and promised that the federal government would draw up the maps that the private sector needed in the first place. As an incentive for people to buy the insurance, it denied all federal aid to those who qualified for the program but didn’t buy in. Although its creators allowed it to borrow funds from the Treasury—a stop-gap measure, lest major floods had hit in its first few years—the program was intended to break even over time and, some thought, might eventually be sold off to the private sector.

Almost none of these good intentions proved justified. The requirement to purchase insurance or lose federal aid fell by the wayside as soon as hard-hit areas came crying to Congress. Government definitions of “actuarial adequacy” ended up leaving out most of the costs private companies would factor into their rates. While communities wishing to let their residents buy into the program did have to discourage the most obviously foolhardy building, poor mapping and the natural clout of local developers made these requirements a triviality. So much for a financially responsible program. “Temporary” subsidies became permanent. Congress periodically forgave the program’s debts and, following Hurricanes Katrina, Rita, and Wilma in 2005, authorized it to borrow \$20 billion from the Treasury that it had no chance of ever paying back. On the eve of Hurricane Sandy, the NFIP still owed the Treasury more than \$17 billion, with another chunk of debt taken out to pay claims from Hurricane Ike in 2008.

With Congress expected to reauthorize the program every five years, many aspects of the NFIP grew worse over time. Even as Congress corrected obvious absurdities—such as subsidies for writing insurance on coastal barrier islands and other areas likely to wash away entirely—members added various benefits and even made the private insurance industry a beneficiary of the program. Under a “write your own” (WYO) program that pays them to adjust claims and service policies, private insurers get to keep about

a third of the total premiums collected, but take on no real risk. While this program isn’t enormously lucrative for insurance company home offices—the tasks they’re asked to undertake are reasonably labor-intensive—it’s not a money loser either. Most large, well-known national property insurers participate in this WYO program, and not a single one was willing to step forward and offer to take on any risk when lobbyists and activists surveyed them about the topic last year.

Over the NFIP’s 45 years of existence, moreover, it has influenced the built environment to such an extent that full-scale privatization couldn’t happen, even if insurers were willing. For those whose mortgages were issued by federally chartered banks, or were purchased by Fannie Mae or Freddie Mac, policy requires the purchase of flood insurance if a property faces at least a 1 percent chance of flooding in a given year. Because NFIP rates have been kept artificially low for decades, millions of people now live in places that wouldn’t be inhabited at all absent the program’s subsidies.

Under Congress’s budget rules, eliminating the program outright would actually cost more money than keeping it operating. Once it finishes paying claims from Hurricane Sandy, the NFIP will owe nearly \$30 billion to the Treasury. So long as those loans are outstanding, they don’t count toward the federal budget. Discontinuing the program, on the other hand, would leave taxpayers on the hook for that debt (and for scheduled mapping improvements) without any new premium dollars coming in the door.

The legally binding insurance contracts the program offers, likewise, make it impossible for Congress *not* to offer bailouts like the one that took place earlier this month. Had Congress not approved the funding, flood insurance policyholders would have gone to court and won judgments ordering the government to pay the claims anyway. Furthermore, the program, to the extent it will repay its debt at all, will never reach the point where it would look attractive to private suitors.

Everybody who has taken a close

look at the NFIP realizes that the program is a mess. Once the symbolic votes to end the program had passed, both Democrats and Republicans came to basically the same conclusions that changes needed to happen. A set of reforms that became law last summer was written jointly by the moderate Republican Rep. Judy Biggert (R-Ill.) and far-left Maxine Waters (D-Calif.). That bill promises to improve maps, phase out some premium subsidies, and allow the program to transfer some of its risk to private reinsurers (insurers for insurance companies).

All of these changes make sense, and no sizable organized group stood against them, but they're hardly the kinds of radical reforms that the program would need to put itself on firm fiscal footing for the long term. Even if all of the proposed changes work as promised, the program's finances will remain such that any state regulator who looked over its books would forbid it from operating if it were a private company, on the basis that it can't pay the claims it will reasonably expect to receive. At best, it will take an additional round of reforms—reforms that are unlikely to until the current program expires in September 2017—for the private sector to seriously begin assuming the liability. And that assumes Congress has the political will to ask coastal property owners to see their property insurance bills soar.

Better by far that the program had never been started. International examples show that private flood insurance can work. Germany and the United Kingdom, among other countries, write almost all flood insurance through private parties. While the business isn't a major profit center for the insurance industry, it, at least, isn't a taxpayer liability. And building is deterred in the most flood-prone areas.

More than anything else, the NFIP offers a stern warning to anybody who wants government to solve every problem. In the case of flood insurance, even the existence of a market failure didn't mean the public sector necessarily had a better solution. For the foreseeable future, America is stuck with the NFIP. ♦

Let's Not Make a Deal

The great non-compromiser.

BY FRED BARNES

President Obama complained in a Saturday radio and Internet address that crucial issues are resolved in Washington only at the last possible moment. It was late December when he spoke, three days before the deadline on the fiscal cliff. A deal to avert automatic tax increases had yet to be reached.

"America wonders why it is in this town why you can't get stuff done in an organized timetable," he said. "Why everything has to always wait until the last minute. We're now at the last minute. . . . Let's not miss this deadline. That's the bare minimum we should be able to get done."

As usual, the president accepted no responsibility, much less blame, for the recurring phenomenon of brinkmanship. Two weeks earlier, he said Republicans were the impediment to reaching timely agreements because "it is very hard for them to say yes to me."

True, it is difficult. But there's a bigger problem. It's not Obama's inability to get along with Republicans. Nor is it the fact that he's an exceptionally poor negotiator. The real problem is simply Obama's refusal to compromise.

The president claims to be open to compromise. Nothing could be further from the truth. It's not a coincidence that he hasn't arranged a single bipartisan compromise with Republicans. Others in his orbit have—Vice President Biden twice, Senate majority leader Harry Reid once—but not Obama personally. He wrecks compromises. He doesn't facilitate them.

In 2011, he came close to negotiating a \$4 trillion "grand bargain" with House speaker John Boehner—before blowing it up. Boehner went out on a limb by agreeing to \$800 billion in tax hikes, but Obama insisted on \$400 billion more in



What is this 'compromise' notion of which you speak?

taxes. That killed the compromise.

Following his reelection in November, the president appeared receptive to a compromise to avoid the fiscal cliff. But he suddenly increased his demands far beyond what Republicans could swallow. Thus, no compromise. Instead, a cliff deal was forced on Republicans, who feared being blamed for raising taxes. It was largely on Obama's terms.

Why is Obama unable to compromise? I think there are both personal and political reasons. Far more than other politicians, Obama is convinced of the rightness of whatever he proposes. As best I can tell, this is not merely an excess of

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THE WEEKLY STANDARD.

self-confidence. It's a vanity, a conceit. On top of that, Obama regards practically everything Republicans want as ideologically toxic.

He was spoiled in his first two years as president. Democrats had overwhelming majorities in the House and Senate, so he got most of what he wanted—Obamacare, stimulus—without the need to compromise with Republicans for their votes.

When those majorities vanished in the GOP landslide in 2010, Obama was confronted with a Republican House and a barely Democratic Senate. He still hasn't adjusted. And with reelection, he doesn't think he has to. He believes it's time for Republicans to knuckle under.

He talks about a "balanced" approach to taxes and spending. But the balance is heavily weighted in favor of tax increases, the bigger the better, and what often amount to phantom spending cuts. He'll cut money for overseas wars that was never going to be spent in the first place.

Yet as the president told journalist Richard Wolffe, "You know, I actually believe my own bull—." Indeed, he does, now more than ever.

The political rationale for spurning compromise comes from Obama's attachment to his Democratic base—labor, liberals, feminists, environmentalists, minorities. He relied on them in his campaign for a second term and he's loath to cross them now. And they're dead set against any meaningful cuts in spending (except for defense).

To reach a compromise with the other party, "you can't just sit back and hope that a bipartisan deal will fall in your lap," says Keith Hennessey, an economic adviser to President George W. Bush. "You have to proactively challenge your own party to make it happen." Obama is unwilling to do that.

In speeches and at press conferences, he pays lip service to tackling entitlements, but it's always in the future. He's endorsed a small reduction

in Social Security's annual cost-of-living increase, but backed away from actually offering it to get a bipartisan compromise. Why? His base opposes even this tiniest of concessions.

In the next three months, Obama faces three deadlines, or cliffs. Government borrowing will reach its limit—the so-called debt limit—in late February or early March. The \$1.2 trillion sequester goes into effect on March 1. And the continuing resolution that keeps the government operating in lieu of a budget expires on March 27.

If the president wants to deal with these before the last minute, he'd better be prepared to compromise. Last week, Senate minority leader Mitch McConnell urged him to "engage now or force a crisis later" on increasing the debt limit. To clear the way, McConnell said, what's required is "a bipartisan spending-reduction solution."

Spending cuts are precisely what Obama refuses to consider. He's called for a "clean" bill to increase the debt limit, unlike 2011 when he was forced to compromise and accept spending cuts (negotiated by others). That was a painful episode for Obama. And he's adamant about not compromising this year.

He's no help on the sequester either. To replace its across-the-board cuts, half defense, half domestic, Obama wants to include tax increases. This is reminiscent of the spending cuts that passed muster with Biden last year, only to be brushed aside when Obama joined budget talks.

In all this, President Obama may be unaware that his allergy to compromise has a downside. It keeps him from acting in his own interest. For a freshly reelected president, he has a surprisingly low job approval rating. It hovers around 50 percent. But he has it within his power to improve his standing. Americans crave two things in Washington: bipartisanship and reduced spending. Deliver them and his approval rating will soar. All that's required on his part is compromise. ♦



B L O O M S B U R Y



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Kyle Scott

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Anti-Defense Secretary

Would Chuck Hagel be the second coming of Louis Johnson? **BY MACKUBIN THOMAS OWENS**

Much of the opposition to President Obama's choice of former Nebraska senator Chuck Hagel to become secretary of defense has focused on his apparent hostility to Israel and his seeming indifference to a nuclear-armed Iran. As serious as these issues are, Hagel's Senate confirmation ought also to focus on his approach to our defense needs.

In September 2011, Hagel told the *Financial Times* that the Defense Department was "bloated," adding: "The Pentagon needs to be pared down. I don't think our military has really looked at themselves strategically, critically in a long time." The question is, will Hagel do so? The danger is that he will see his appointment as a mandate for cutting defense spending regardless of strategic considerations.

In thinking about Hagel as secretary of defense, it is useful to look at a precedent: President Harry Truman's appointment of Louis Johnson as secretary of defense in early 1949. Truman was committed to a drastic reduction in defense expenditure in order to fund his domestic program, essentially a continuation of Roosevelt's New Deal. When the first secretary of defense, James V. Forrestal, argued that in light of emerging threats, defense budget cuts were too deep, Truman asked for his resignation and replaced him with Johnson, whom most historians regard as a partisan hack.

Mackubin Thomas Owens is editor of Orbis, the journal of the Foreign Policy Research Institute, and author of Civil-Military Relations After 9/11: Renegotiating the Civil-Military Bargain.

As Truman's hatchet man at the Pentagon, Johnson had the job of implementing the president's commitment to drastic defense cuts for their own sake, independent of the threat environment. Truman saw the defense budget as what was left over after subtracting the cost of domestic programs from total government tax receipts.

Furthermore, both Truman and Johnson fell victim to the hubristic belief that they could foresee the future. The cornerstone of the Truman-Johnson defense posture was that the U.S. atomic monopoly (which the Soviets broke in August 1949) constituted an adequate defense against all external threats, reducing if not eliminating the need for conventional forces. Even the issuance of NSC-68 in early 1950, which delineated the threat posed by the Soviet Union with its newly acquired fission bomb, did not deter Truman and Johnson from their budget-driven approach to defense.

Johnson was especially hostile to the Navy and the Marine Corps. In December 1949, he told Admiral Richard L. Conolly, "The Navy is on its way out. There's no reason for having a Navy and Marine Corps. [Chairman of the Joint Chiefs of Staff] General [Omar] Bradley tells me that amphibious operations are a thing of the past. We'll never have any more amphibious operations. That does away with the Marine Corps. And the Air Force can do anything the Navy can do nowadays, so that does away with the Navy."

This particular battle culminated in the "revolt of the admirals" that same month, when a number of high-ranking naval officers, including the

chief of naval operations, Admiral Louis E. Denfeld, were either fired or forced to resign. But other officers toed the official line, even though their services, while not targeted to the extent that the naval services were, still faced substantial cuts. In 1948, JCS chairman Bradley had stated that "the Army of 1948 could not fight its way out of a paper bag." But a year later, Bradley publicly supported Johnson's decisions. Army chief of staff General Lawton Collins went so far as to claim in testimony before the House Defense Appropriations subcommittee that the reduction of Army force levels made it *more* effective.

Of course, Johnson was wrong. There was an amphibious landing less than a year later at Inchon, which broke the back of the North Korean invasion of South Korea. Johnson was blamed for the lack of readiness on the part of the U.S. troops that were initially sent to Korea—and his tenure as secretary of defense came to an abrupt end shortly after the outbreak of that conflict. But the effects of the budget and doctrine debates of the late 1940s lingered, adversely affecting inter-service relations for years.

There is no question that the defense budget can and should be cut. The danger is that President Obama has appointed Hagel for the same reason that Truman appointed Johnson: to take an axe to the Pentagon in order to free up money for the president's expanded welfare state. But strategy, not budget cuts for their own sake, should drive defense spending and force structure.

A defense secretary like Louis Johnson is surely not the best choice to lead the Pentagon during a time of austere budgets. But this is what we are likely to get with Hagel. While both former secretary of defense Robert Gates and the incumbent, Leon Panetta, have warned that substantial defense cuts will adversely affect national security, Hagel, like Johnson in 1949, seems to relish the opportunity to gut the defense budget without regard to geopolitical realities. ♦

Grand New Party

These are not your father's Republicans.

BY NOEMIE EMERY

Ironies will never get stranger than that a rock-ribbed conservative from South Carolina would bring Diversity with a capital D to the old, white, and male Republican party, but that is what Jim DeMint, now leaving the Senate for a think tank, has done. He and the Tea Party have supported some clunkers—Sharron Angle and Christine O'Donnell in 2010, and Richard Mourdock most recently—but thanks in part to him and to it the GOP will have in 2013 two Hispanic senators from two big states, two Hispanic governors from blue states that went for Obama, two governors from two deep Southern states who are children of Indian immigrants, two rising-star women in the House and the Senate, and Tim Scott, who now fills DeMint's seat as the only black serving in that body, and the fifth to serve there since Reconstruction.

Before this, Scott had won the House seat representing Charleston and in the primary defeated the son of one of the state's white former governors as well as the son of Strom Thurmond. When a daughter of Indian immigrants appoints a black man from a background of poverty over the children of two white grandees in the home of Fort Sumter, something has changed in the South, in South Carolina, and certainly in the Republican party, which, when totting up its list of potential national candidates for 2016 and beyond, finds white males in the minority for the very first time.

The Republicans (and the con-

servative movement) now have an assortment of stars who are female and/or minority, but far fewer overall female and minority elected officials, and have a hard time winning votes from nonwhites and from unmarried women. Democrats, on the other hand, win big among nonwhites and (single) women, and have many more nonwhite and female elected officials, but—with the exception of the president—have few among them who are standouts by any description. In short, there is a quality/quantity split that should perplex both parties.



New GOP senator
Tim Scott

Among the Hispanics in Congress, for instance, Democrats have 25 against 8 for Republicans. But Republicans have 4 minority governors (2 of them female) to 1 for the Democrats, the sole black who is now in the Senate, and 3 minority senators to the Democrats' 1. Republicans need to draw more votes from nonwhites and women; Democrats need to find more who can run on a national ticket. Why does the GOP, which gets few votes from these factions, produce and accept so many as leaders, while the Democrats, who have so many votes (and so many B-listers) struggle to find real stars?

The Democrats' problem was first tagged in late 2010 by Josh Kraushaar of the *National Journal*, after the Tea Party wave in the midterm elections deposited Reps. Scott and Allen West, Sen. Marco Rubio, and governors Susana Martinez, Brian Sandoval, and Nikki Haley (who appointed Scott to the Senate) on the GOP's beach. It was true that the Republicans had only 13 blacks, Hispanics, and Asian Americans in state or national office compared with 75 for the Democrats;

but the bulk of the latter were mayors of largely black cities, or congressmen from specially crafted minority districts, elected as representatives of that minority, by largely minority votes.

In passing the Voting Rights Act of 1965, liberals not only struck down the rules that had kept blacks from voting, but added to them a new privilege in the process: the right to elect not merely someone who shared their opinions, but who shared their own background or race. To do this, they drained neighboring districts of their nonwhite voters, creating strange, convoluted electoral entities, guaranteed to elect blacks or Hispanics in perpetuity. (Republicans opposed this in principle, but backed it in practice, as carving out these safe seats for Democrats turned the surrounding districts into easier gets for themselves.) At first, this redistricting regime had the desired results, and caused a quick influx of nonwhites into Congress, but it also put a lid on their influence, and their potential to rise: Safe in their insular, one-party districts, they lacked the incentive to appeal to the diverse and more moderate voters who decide statewide and national races.

"The vast majority of black and Hispanic members hail from urban districts that don't require crossover votes to win, or represent seats designed to elect minorities," as Kraushaar wrote. "They are more liberal than the average Democrat, no less the average voter, making it more difficult to run statewide campaigns." Nonwhite Republicans steer clear of these districts and choose to debut in more diverse venues, from which they emerge knowing how to talk to a much wider audience. Democrats find themselves locked in a ghetto, which offers the option of steady employment, but not too much opportunity to advance.

This situation didn't occur by accident, but grew from the concepts of race, rights, and justice as seen through liberal, and through conservative, eyes. To conservatives, rights accrue to individuals—gender and race describe, but do not define, one—and "racial justice" occurs when people of every race are judged by race neutral standards,

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or as close to race neutral standards as one can attain in this world. To the left, rights accrue to the group—race and gender define you (and dictate your interests and outlook)—and justice is served when each race or gender is given a proportional allotment of representation or preference.

Thus, the cure for the low number of nonwhites in the House is specially carved-out minority districts, and the cure for low numbers in elite schools and/or professions is affirmative action (which conservatives backed when it amounted to outreach but opposed when it came to quotas). Liberals agree with New York's former mayor David Dinkins that the United States is a "gorgeous mosaic," with each distinct ethnic group as its separate gemstone; while conservatives have clung to the metaphor of the melting pot, aka assimilation, the process by which the Irish, Jews, Poles, Greeks, et al., became over time generic Americans, while generic America became at the same time more Irish, more Jewish, more Polish, more Greek.

The minority district institutionalizes the theory of the mosaic (for instance, that blacks are best represented by other blacks), while Republicans cherish the theory that anyone from any background whatever can speak for himself, for the country, and for all it contains. Ironically, President Obama, the Democrats' breakthrough minority star, seems a better fit in many ways with the conservative model: The son of a Kenyan who was brought up by his mother's white family, he presented himself not as an American ethnic but as a man of the world, whose affect and appeal were both post- and trans-racial, and who, with his mixed Anglo and African background, was a melting pot unto himself.

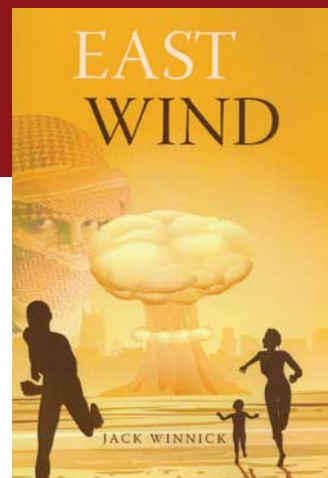
In the end, however they started, the Democrats' race-based solutions have turned out rather less well than was planned. They did get more nonwhites into elite schools on a preference system, but many dropped out before graduation, victims of "mismatch," having been pushed up just one notch or so over the level at which they might have excelled. Democrats did reap a

quick fix of minority congressmen, but at the expense of raising a cadre of national leaders, making them spokesmen for one race and not for the others, and leaving them unprepared to appeal across group boundaries.

Democrats would have done better, as arguably would minority groups themselves, had the voters now concentrated in race-based districts been spread through several districts, in which they would be swing votes, if not the majority, thus making surrounding districts a lot less Republican. As Kraushaar noted after the 2010 midterms, "of the 75 black, Hispanic, and Asian-American Democrats in Congress and governorships," only 9 won in venues that were majority white. Unfortunately, for the Democrats, almost all 50 states are majority-white, not to mention the country as a whole, and if and when this stops being true of the country, no one other race will prevail. Thus, this design has been a dead end for the Democrats: There are few new Obamas in the national pipeline, while Republicans have about six blacks, Hispanics, and Asian Americans who would make plausible national candidates.

That said, the Republicans have a problem, since, as the *New Yorker* has cogently noted, "getting Republicans to vote for a black candidate and blacks to vote for a Republican candidate" are two different things. As it turned out, the first part was easy: The GOP in 1996 tried to draft Colin Powell for president, welcomed his appointment as secretary of state, cheered the appointment of Condoleezza Rice to succeed him, gave her a standing ovation at the Republican convention in 2012 when she described her rise from her childhood in the segregated city of Birmingham, and would have been delighted had she been on the ticket as vice president. The Tea Party, routinely caricatured in the media as the KKK redux, has brought the GOP an influx of nonwhites and women, backing Ted Cruz, Marco Rubio, Nikki Haley, and Tim Scott against more establishment figures.

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It is the second part of this question—will minorities one day vote for conservatives, if conservatives run more minorities?—that may not be answered too soon. Republicans have tried, and not done well earlier, but never before have they had so many vibrant and young multihued standard-bearers, eager to talk up the charms of free markets, with examples from their (and their parents') own lives.

They are living examples of upward mobility: Rubio's immigrant parents educated four children; Haley's immigrant parents started a successful business; Scott was a boy from a one-parent home ready to drop out of high school when a restaurant owner took him under his wing and taught him how to think like a businessman, which launched his successful career. His swearing-in was live-streamed into his old high school, and he is returning there soon to talk to the students about the free market system, and how they can rise in it. This was enough to make NAACP president Benjamin Jealous rush to declare he would give Scott an "F" on his "civil rights issues report card," which defines "civil rights" as the Democratic agenda, and grades on such things as abortion and green jobs. Tim Scott, of course, is the Democrats' nightmare, which is why Republicans should hope he visits not just his own old high school, but schools across the country, the living example of what can be done, not on the NAACP's model, but the conservatives' way.

Can Tim Scott and the like swing the black vote in his party's direction? Probably not. But then, they don't have to: They just have to reach the entrepreneurial subset and detach a part of it, get a hearing from the young and ambitious, present an authentic alternative vision, and turn a few people around. They don't have to get most of the black vote. Any erosion of the lop-sided margins by which Republicans now lose minority voters would be a gain.

If you were a student in high school, who would inspire you more—Tim Scott or Ben Jealous? This is a new chapter that's only begun. ♦

Money in Bad Faith

The depredations of the Fed.

BY JUDY SHELTON

The Federal Reserve is not your friend. Whether you reside on Wall Street or Main Street, whether you are a borrower or a saver, whether you lean toward the Tea Party or the Occupy Wall Street movement—or whether you simply believe in free markets and free people—loose monetary policy is bad for you and for your economic prospects.

Would a friend lure you into taking unjustified risks in pursuit of a false promise of monetary gain? Would a friend try to pull the wool over your eyes by paying you with cheapened tokens? Would a friend induce you to seek financial rewards through speculative conniving instead of virtuous endeavor?

If the GOP wants to be the party of sound money—not only as a vital tenet of government fiscal responsibility but also as the ethical foundation for free-market capitalism—Republicans should start focusing on the harmful consequences of unwarranted money creation by our central bank. People need to understand how the Fed's efforts to "stimulate" economic activity through monetary policy are fomenting a destabilizing fissure between the real economy and the precarious world of high finance.

When money creation is out of sync with productive economic growth, the link between honest effort and reward is damaged. It is disheartening to keep working away at providing real goods

and services while others are seen to receive arbitrary gains whenever the Fed bestows its latest quantitative easing gifts on financial markets. And it's discouraging to plan carefully for the future only to have seemingly prudent economic decisions transformed into disappointing, life-altering mistakes.

How can we blame people for buying homes they can't afford when interest rates were lower than inflation during the 2000-2003 period? As John A. Allison, former head of banking giant BB&T, explains in *The Financial Crisis and the Free Market Cure*: "This creates a huge psychological and economic incentive to borrow." Banks were also motivated to make as many loans as possible—not only to serve customer demand but also because the Fed's policy of low-but-perpetual inflation indicates a government bias toward continually rising housing prices.

Who could have foreseen a global financial crisis that would utterly confound such reasoning? Certainly not the Fed; our central bank was clueless about the credit bubble that would burst in 2008, despite its central role in fueling it.

So did those homebuyers act irresponsibly? Should the bankers be condemned as "predatory" lenders? Or did well-intentioned individuals respond logically to faulty price signals engineered through the defective monetary policies of the Fed? It's time to recognize the social costs imposed by such distortions as well as the economic losses. Money miscalibration sets people against each other for reasons having more to do with skewed incentives than selfish motivations.

Today we are witnessing an increasingly divisive tension between

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high-profit activities conducted at trading desks for big money-center banks and next-to-nothing returns offered to average savings account holders. The Fed's aggressive liquidity injections are showing up as asset bubbles in sophisticated global financial markets even as domestic consumer price indices show only modest increases; this two-tier effect favors "whales" who can wager millions on exotic credit instruments while stifling modest savers with negative real returns.

According to the latest semi-annual report issued by the Bank for International Settlements, the gross market value of outstanding over-the-counter derivatives is \$25.4 trillion—yes, trillion—with 75 percent of the contracts linked to interest rates: forward rate agreements, swaps, options. In June 2008, shortly before the crash, the gross market value of outstanding OTC derivatives was \$20.4 trillion, with 46 percent linked to interest rates.

So what has actually changed since the precrisis financial situation? Instead of tamping down speculative betting on interest rates in favor of rational market pricing of loanable funds, the Fed's monetary policies are stimulating it. No wonder traditional financial intermediation—the kind that used to channel depositor funds toward promising new businesses—is now oriented toward gaming various hunches about the Fed's next move. Even smaller banks are learning to churn their Treasury holdings rather than make loans to private-sector borrowers—especially since federal regulators are evaluating their portfolios.

Productive economic activity requires a commitment of resources based on faith in the future; it's inherently risky, but that's the nature and genius of capitalism. Unfortunately, the Fed's tactics for suppressing interest rates have brought about conditions antithetical to entrepreneurial capitalism: loose money, tight credit.

If we want to preserve the morality of a free-market system, we cannot permit our central bank to carry out monetary policy in ways that play favorites. It's especially egregious that the Fed has become complicit in drawing off

capital into the abyss of deficit financing; clearly, our central bank is catering to the political class, bailing out Washington itself through massive purchases of government debt obligations. Monetary policy today delivers the biggest benefits to the world's largest borrower—our federal government.

If we continue to allow the Fed to underwrite deficit spending and inflict the resulting monetary distortions on the people who actually contribute real value to the economy, who live and work in the belief that saving is a virtue, we will witness the steady demoralization of democratic capitalism. ♦

Debacle in Benghazi

It's worse than an injustice; it's a humiliation.

BY STEPHEN F. HAYES & THOMAS JOSCELYN

On September 21, Secretary of State Hillary Clinton spoke to reporters before a meeting with the Pakistani foreign minister. She addressed the September 11 assault on U.S. facilities in Benghazi, Libya. "What happened was a terrorist attack, and we will not rest until we have tracked down and brought to justice the terrorists who murdered four Americans."

Clinton's statement was notable. It was the strongest and most direct assessment of the attacks from any Obama administration official in the first 10 days after the deaths. By calling the incident a "terrorist attack," Clinton acknowledged what President Obama had gone out of his way to avoid.

The second part of Clinton's comment generated little interest. Her vow to bring to justice the perpetrators of the attacks was the kind of perfunctory promise we expect to hear from any politician after any attack, particularly one so brazen. Of course it would be a top priority of the Obama administration and its lead diplomat to understand the attacks and

punish those who committed them.

Yet four months later, Clinton's promise is notable precisely because it has gone unfulfilled. No one has been "brought to justice"—a fact that seems unlikely to change anytime soon. "We're not even close," says one U.S. official involved in the investigation.

And jihadists in the region, no doubt emboldened by the lack of U.S. response to the attacks, have taken to taunting the American investigators and celebrating U.S. feebleness. Washington has very little to show for its investigation of the Benghazi attacks. One leading suspect is in custody—Egyptian custody—and we're being denied access to him. Another sipped a strawberry frappe in the lobby of a luxury hotel in Benghazi as he told a *New York Times* reporter that he felt no need to hide from the United States. And when a third suspect was freed from a Tunisian prison earlier this month, the U.S. government was given no warning, but extremists belonging to an al Qaeda-linked group apparently had advance notice.

If there is any urgency to the U.S. government's efforts to "bring to justice" the terrorists, it's well hidden. It took the FBI team assigned to investigate Benghazi nearly a month to arrive there. Later, after they had supposedly scoured the U.S. consulate, on

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two separate occasions reporters found highly sensitive documents on the floor—some including the names of Libyans working with the U.S. government. Robert Mueller, the head of the FBI, visited Libya as part of the investigation for the first time last week.

But nothing demonstrates the lack of urgency so much as the case of Ali Ani al Harzi, a jihadist who was detained in Tunisia for his suspected involvement in the attacks until his surprising release on January 8.

U.S. officials first became suspicious of Harzi after learning that he had “posted an update on social media about the fighting [in Benghazi] shortly after it had begun,” according to Eli Lake of the *Daily Beast*. That post was “one of the first clues the intelligence community had about the perpetrators” of the September 11 assault on the U.S. consulate.

Harzi did not stay in Libya after the attacks, but instead made his way to Turkey. It was there in early October, at the request of the U.S. government, that Harzi and a fellow Tunisian were arrested. Harzi was reportedly en route to join the jihad against Bashar al-Assad’s crumbling regime in nearby Syria.

In mid-October, Harzi was deported from Turkey to Tunisia. During a televised interview on November 1, Tunisian interior minister Ali Larayedh explained that Harzi was “strongly suspected to have been involved in the attack of Benghazi.”

The U.S. government, which had provided the intelligence that led to Harzi’s capture, asked the Tunisians for access to him. These requests were met with silence, then stonewalling. The State Department, apparently concerned about the stability of the country’s young, post-Arab Spring government, elected in October, did little to pressure the Tunisians for access. Republicans in Congress, led by Lindsey Graham and Saxby Chambliss in the Senate and Frank Wolf in the House, threatened the Tunisian government with consequences for its lack of cooperation.

In early November, Graham and Chambliss announced that the

Tunisians had agreed in principle to allow U.S. investigators to interview Harzi in the presence of his lawyer and a judge. But days passed, then weeks, and the FBI interrogators who had gone to Tunisia to question Harzi were not given access to him. One source familiar with the investigation tells THE WEEKLY STANDARD that FBI agents spent five weeks in Tunis as the government resisted requests for time with Harzi.

Meanwhile, legislators were urging the State Department to increase pressure on its Tunisian counterpart. Wolf worked behind the scenes to encourage State to condition future aid on access to Harzi. Since the new government was established, the United States has provided more than \$300 million in aid. In September 2011, Tunisia qualified for additional funds through the Millennium Challenge Corporation’s Threshold Program.

The State Department responded to Wolf’s efforts by putting him off. “We are in regular contact with the Tunisian government on this case and Tunisian authorities are cooperating with us through normal law enforcement channels,” wrote Assistant Secretary of State David Adams on December 17. “As this is an ongoing criminal investigation, we cannot provide further detail.” Adams did, however, make the case for more aid to Tunisia, regardless of its lack of cooperation. “Continued U.S. support is critical to Tunisia’s successful democratic transition,” Adams wrote, pressing the need for more funds for Tunisian security forces and economic development.

The FBI finally interviewed Harzi on December 22 for three hours. Following that session, U.S. officials were divided about whether Harzi had provided valuable information but agreed that he remained an important suspect in the Benghazi attacks and a potential source of intelligence on al Qaeda and its affiliates.

Harzi has strong jihadist credentials. As first reported by Eli Lake in the *Daily Beast*, U.S. officials have identified Harzi’s brother as “a mid-level planner for al Qaeda’s franchise in Iraq,” who arranges “the travel of

fighters from North Africa to Syria’s al Qaeda-linked opposition, known as the al-Nusra Front.” The al-Nusra Front is a direct extension of Al Qaeda in Iraq (AQI), an al Qaeda affiliate that has sworn allegiance to Ayman al Zawahiri. In December, the State Department revealed that al-Nusra, which has become the most lethal part of the Syrian insurgency, is under the “control” of AQI’s leader.

Harzi had tried to join his brother, and Al Qaeda in Iraq, before. In 2006, Tunisian authorities arrested Harzi under strict counterterrorism laws for showing a desire to wage jihad in Iraq. Harzi had been in touch with his al Qaeda brother, who was shuttling recruits into Iraq to fight the U.S.-led coalition. Harzi was imprisoned until after President Zine El Abidine Ben Ali’s government in Tunisia fell on January 14, 2011. Once granted amnesty and released, Harzi made his way to Benghazi by September 11, 2012.

The same day the FBI conducted its interview with Harzi, a media outlet associated with the leading al Qaeda-linked extremist group in Tunisia, Ansar al Sharia Tunisia, posted online photographs purportedly showing three FBI agents who participated in that session.

Ansar al Sharia Tunisia’s posting was first discovered by the SITE Intelligence Group, which monitors jihadist websites and online forums. The headline reads “Exclusive Pictures of the FBI Agents who Investigated Brother Ali al-Harzi (The Case of Killing the American Foreigner in Libya).” The group claimed that “despite being forcefully prevented from taking pictures, we were able to take some exclusive pictures” of the three FBI agents.

U.S. officials tell THE WEEKLY STANDARD that the release of the photos was a clear attempt to intimidate the Americans and show that the FBI could not act with impunity. In its posting, Ansar al Sharia Tunisia warned the Tunisian people that their government had allowed the FBI “to begin investigating your sons under post-revolutionary protection.” In a bit of hyperbole, the group also claimed that the Islamist Tunisian government

was trying to join the American union.

Shortly after the FBI's visit with Harzi in December, Ansar al Sharia Tunisia released a video on YouTube showing a lawyer discussing Harzi's case. The lawyer addressed the FBI's role in the questioning. The video begins with an introductory sentence that reads: "Lawyer Hafiz Ghadoun talks about the case of Brother Ali al Harzi—Allah free him—and confirms the presence of investigators from the FBI [sent there] to interrogate him."

On January 7, a judge in Tunis ruled that there was not enough evidence to continue holding Harzi, and the Benghazi suspect was quickly released. Washington had no prior warning that Harzi would be freed, but Ansar al Sharia Tunisia apparently did.

The following day, the group posted a video on its Facebook page showing Harzi walking out of jail into the arms of his joyous supporters, who are not identified. Harzi thanks Allah for his freedom, but begs that his still-imprisoned comrades not be forgotten.

Why did the Tunisians allow Harzi to rejoin his jihadist brothers? "The government is more afraid of them than us," says a senior congressional Republican with access to the intelligence on Benghazi. For good reason. The U.S. government hasn't so much as issued a statement expressing regret that the Tunisians released Harzi.

There's a reason Ansar al Sharia Tunisia has taken such great interest in Benghazi and Harzi's case. Many of the suspects in the consulate attack are members of Ansar al Sharia—the same name used by Harzi's cheerleaders in Tunisia—a militia based in Benghazi.

In August 2012, just weeks before the assault on the consulate, the Defense Department and Library of Congress published a report ("Al Qaeda in Libya: A Profile") that discussed connections between the two Ansar al Sharia groups. The report's authors concluded that Ansar al Sharia in Libya "has increasingly embodied al Qaeda's presence in Libya, as indicated by its active social-media propaganda, extremist discourse, and hatred of the West, especially the United States." Moreover, the "Facebook sites of Ansar al Sharia in

Libya and the group in Tunisia appear similar in design and content and also share contacts, suggesting coordination between the groups."

On September 14, three days after the attack in Benghazi, Ansar al Sharia Tunisia stormed the U.S. embassy in Tunis. The embassy and an American school were ransacked, causing millions of dollars in property damage. An al Qaeda-style black banner was raised over the embassy where the American flag usually flies.

Ansar al Sharia Tunisia is headed by Seifallah ben Hassine (aka Abu Iyad al Tunisi), who has been designated an al Qaeda-affiliated terrorist by the United Nations and the U.S. government. Other designated al Qaeda terrorists hold leadership positions in the group as well.

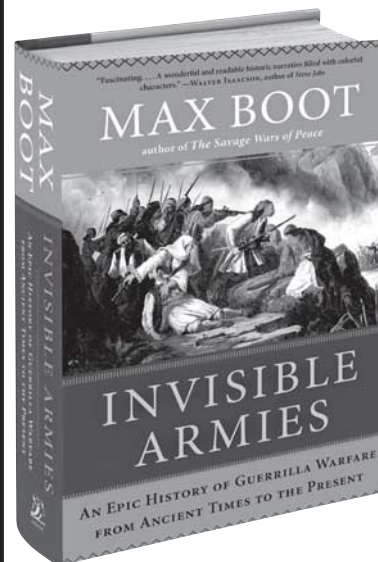
While the Obama administration has not publicly drawn a connection between the terrorist groups that assaulted the U.S. diplomatic facilities in Benghazi and Tunis, others have. In early January, for instance, *Al-Hayat* (an Arabic paper in London) reported that members of Ansar al Sharia Tunisia travel to Libya to receive extensive terrorist training in camps "under the supervision of" Ansar al Sharia Libya. Mike Rogers, the chairman of the House Intelligence Committee, has seen enough evidence to conclude that the two Ansar al Sharias are effectively the "same organization."

We are left, then, with an uncomfortable set of facts. Despite its many promises, after four months of a criminal investigation, the U.S. government has made little progress on bringing the Benghazi attackers to justice. The Obama administration, which came to office trumpeting "smart power," has shown itself unable to produce cooperation even from governments receiving vast sums of aid from the United States without congressional threats. And now, the same terrorist organizations that supplied the attackers for the assaults on American facilities in Benghazi and Tunis are openly threatening FBI investigators and celebrating the release of one of the few suspects in the 9/11/12 attacks.

That's not justice, it's humiliation. ♦

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Obama's Regulatory Rampage

Fasten your seatbelts, because the courts and Congress won't be able to slow it down much

BY ADAM J. WHITE

Despite all of the White House speechwriters' labors on the Inaugural and State of the Union Addresses, their attempt to define the tone of the president's second term is unlikely to improve upon the president's own words, a year ago: "Where Congress is not willing to act, we're going to go ahead and do it ourselves." It would be "nice" to work with Congress, he conceded, but he and his regulators were ready to act unilaterally.

That threat echoed the White House press secretary's own warning, just weeks earlier, that although Congress ought to act to improve the economy, the president "can also act independently—or, rather, administratively, and exercise his executive authority to benefit the American people in other ways. And he will continue to do that." The White House called this the "We Can't Wait" initiative.

Today, looking ahead at Barack Obama's second term, many of his supporters still can't wait. The *New Republic's* Timothy Noah is among them. "With the election over," he wrote last month, "the president can now take bolder action on a host of issues that don't require cooperation—or even input—from Congress." True, "some of these actions might be controversial," but "that concern matters less now that Obama has faced voters for the last time."

Noah needn't fret. In his second term, the president will have every incentive to pursue an agenda predominantly, perhaps even exclusively, through unilateral executive branch action. Some call this the "regulatory cliff"; others, a regulatory "flood" or "tsunami" (as Sen. Rob Portman, the *Wall Street Journal*, and the Chamber of Commerce have put it). Call it what you will, but for the next four years, the Obama administration will govern primarily through the regulatory agencies. And Congress and the courts, having tied their own hands, can do little to stop it.

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Before speculating what the president will do in his second term, consider briefly what he accomplished in his first. While Obama's first four years were headlined by landmark legislation, such as the Affordable Care Act and the Dodd-Frank financial reforms, his administration's agencies also imposed immense regulatory burdens.

According to the White House—specifically, the Office of Information and Regulatory Affairs (OIRA), the White House's central office for regulatory analysis—the "major rules" enacted by executive branch agencies in President Obama's first three years cost the public as much as \$32.1 billion.

Now, the White House offered that figure as cause for celebration, claiming the alleged net benefits of those regulations were (by its own accounting) worth \$91 billion—or, as the White House's website boasts, "over 25 times the net benefits" of the Bush administration's first three years. But one need not be a cynic to have doubts about the administration's accounting. The first three years of Obama's regulations weren't just 25 times more "beneficial" than Bush's; they were also 6 times more "beneficial" than Clinton's first three years of regulations. The administration was evidently very, very confident of its own ability to regulate the nation into prosperity.

Still, even taking the administration's analysis at face value, President Obama's first term reflects a marked increase in regulatory burden: The Obama administration's first three years of major rules, costing up to \$26.7 billion, were five times more burdensome than the Bush administration's first three years (\$5.3 billion) and three and a half times more burdensome than the Clinton administration's (\$7.6 billion).

And that analysis is limited to just the administration's "major rules"—rules costing more than \$100 million annually—for which the agencies calculated costs and benefits. It neglects 41 other "major rules" for which benefits and costs had not been calculated, and is only "a fraction of

the 317 significant regulations, and over 3,500 total regulations,” promulgated by the administration, according to Susan Dudley, director of George Washington University’s Regulatory Studies Center and former OIRA administrator under President George W. Bush.

But even the administration’s account of its “major rules” understates the cost of regulations. First, it includes only the “executive” agencies, and not the “independent” agencies, such as the Federal Reserve, the National Labor Relations Board, the Securities and Exchange Commission, and other agencies that are run by the president’s appointees yet partially shielded from his direct oversight. Those agencies have grown increasingly active in recent years, partly as a result of the financial crisis and subsequent enactment of Dodd-Frank, but they are subject to fewer or no cost-benefit analysis requirements—a point highlighted by an awkward interaction between Federal Reserve chairman Ben Bernanke and JPMorgan’s Jamie Dimon in 2011. When Dimon asked Bernanke, at a public event, “Has anyone bothered to study the cumulative effect of all” the Fed’s new rules, to ensure they did not unduly burden the economy, Bernanke responded with remarkable candor: “Has anybody done a comprehensive analysis of the impact on credit? I can’t pretend that anybody really has. You know, it’s just too complicated. We don’t really have the quantitative tools to do that.”

A second cause of underestimation is that the White House’s statistics cover only regulations, and not the myriad enforcement actions, permit application reviews, and other non-rulemaking activities. They do not include the administration’s rejection of the Keystone XL pipeline, for example, or the undeclared “permitorium” that blocked and delayed offshore drilling permit applications in the aftermath of the Gulf of Mexico oil spill, long after the federal courts struck down the administration’s officially declared moratorium.

In the absence of comprehensive government statistics stating the cost of regulations, critics have offered their own estimates. The American Action Forum, for example, estimates that the Obama administration’s regulations have cost \$467 billion. Whether \$467 billion or “merely” \$32.1 billion, the Obama administration proved itself adept at imposing regulations in the first term. And it was just getting warmed up.

What, then, does the Obama administration have in store for the second term? Until recently—that is, until Election Day—the administration tried very hard not to tip its hand. Although longstanding executive orders require the administration to publish a “Unified Regulatory Agenda” semiannually, the administration refused to issue either a spring report or autumn report during the election year—an “unfortunate precedent,” according to the American Bar Association’s Administrative Law Section.

Only after Election Day did the White House finally release a 2012 regulatory agenda—and then only in a “news dump” on the Friday before Christmas. It identified 128 “economically significant” rulemakings, but took care to applaud once more the “remarkably high” benefits that the administration’s regulations allegedly have achieved.

The Unified Regulatory Agenda was not the only thing withheld until after Election Day. According to various reports, many agencies withheld controversial regulations until after the election. *National Journal* reported shortly before the election that “federal agencies are sitting on a pile of major health, environmental, and financial regulations that lobbyists, congressional staffers, and former administration officials say are being held back to avoid providing ammunition to Mitt Romney and other Republican critics.”

Once those concerns were mooted by the president’s reelection, the regulatory pipeline quickly reopened. On December 14, the Environmental Protection Agency issued a new “soot” rule, to limit pollution from automobiles and smokestacks. The EPA estimates the rule’s costs as ranging from \$53 million to \$350 million per year, leading *Politico* to ask whether the “significantly tightened” pollution limits are “a sign for the second term?”

A week later, EPA issued a new rule limiting mercury, acid gas, and other emissions from industrial boilers. The EPA estimates the rule’s costs at \$1.4 billion to \$1.6 billion per year.

Furthermore, in the weeks after the election, the EPA abruptly banned BP from bidding for new offshore drilling leases, an unexpected action that left Senators Mary Landrieu, Lisa Murkowski, and others grasping for answers. “I can’t figure out where this directive came from, what precipitated it, on what grounds it was issued,” said Landrieu, a Democrat.



ILLUSTRATIONS BY JASON SEILER

As busy as the EPA was after the election, it certainly wasn't alone. On November 30, the Department of Health and Human Services released a proposal to collect "user fees" from insurance companies listing health insurance in Obamacare exchanges created by the federal government. The fee, amounting to 3.5 percent of the value of the insurance policy, was highly controversial—first and foremost because it seems squarely illegal. Obamacare authorizes states to establish user fees for state-created health insurance exchanges, but the hastily drafted statute included no corresponding user-fee provision for exchanges established by the federal government for states that refused to set up their own exchanges. The administration's aggressive legal interpretation sets the stage for yet another round of heated Obamacare-related litigation.

And the pace may be accelerating. Each day seems to bring word of new, ever more controversial executive regulatory actions. Last week, *Politico* reported that HHS is considering "Mandate Plus," an escalation of Obamacare's individual mandate that would increase the pressure on Americans to buy health insurance rather than paying the Supreme Court-approved "tax." (Or, as Cass Sunstein and other behavioral economists might say, to give Americans a bit stronger "nudge.") Just days later, the White House released a list of 23 "executive actions" that it will take to combat gun violence. Reprising its old "We Can't Wait" campaign, the White House titled the plan "Now Is The Time."



Alexander Hamilton observed in *Federalist 72* that a president ineligible for reelection would experience 'a diminution of the inducements to good behavior.'

Those examples are significant in and of themselves, but, more important, they stand as the earliest symptoms of a trend toward a substantial increase in regulatory activity. For just as President Obama's first term was much more active than Bush's and Clinton's first terms had been, his second term will likely be much more active than his first. This imminent increase owes to a number of pro-regulation incentives not present in the president's first term but very present in the second.

First, and as *TNR*'s Timothy Noah already noted, the president no longer faces the discipline of the ballot box. While Noah sees that as a good thing, others would characterize it differently. Alexander Hamilton, for example,

observed in *Federalist 72* that a president ineligible for reelection would experience "a diminution of the inducements to good behavior." Much as Madison's separation of powers allows "ambition . . . to counteract ambition" between the branches of government, Hamilton saw that a president's desire for reelection exemplified "the best security for the fidelity of mankind," making presidents' "interests coincide with their duty." Invoking Hamilton years later, Arthur Schlesinger wrote in *The Imperial Presidency* that the president's desire for reelection "more often has a salutary impact in increasing sensitivity to public needs and hopes"; the presidents' term-limitation "purifies neither their own performance nor the national attitude toward them."

Second, President Obama has far less incentive to try to collaborate with Congress today than he did four years ago. In 2009, the administration deferred substantial regulations while attempting first to enact its policies in legislation; if anything, the possibility of unilateral regulatory action was a weapon brandished to induce Congress to act.

The best example of this was the president's climate change agenda. While President Obama came to office eager to impose a new greenhouse gas regulatory regime in the aftermath of the Supreme Court's *Massachusetts v. EPA* decision, he first spent several months pushing for Congress to enact those policies in statutes. Just two months after his inauguration, the White House rebuffed environmentalists' calls for the EPA to issue greenhouse gas regulations, stressing that Obama's "strong preference" was "for Congress to pass

energy security legislation that includes a cap on greenhouse gas emissions." After the EPA issued its proposed "endangerment finding" in April 2009, both the administration and Democrats in Congress leveraged the threat of EPA regulation to promote the Waxman-Markey climate bill. The *New York Times* reported that while the president was pushing for a legislative solution, he was "holding in reserve a powerful club"—namely, the EPA's regulatory power. In Congress, Rep. John Dingell warned his colleagues that if they wouldn't act, then "greenhouse gases will be regulated by EPA. And if you want something to shudder about, I beg you to take a look at that." The climate bill passed the House but stalled in the Senate; finally, the EPA went through with its regulatory

program, finalizing its climate change “endangerment finding” in December 2009.

This time, by contrast, with a staunch Republican majority in the House and a divided Senate, the president has no serious prospects for achieving his regulatory policies through legislation; he can go straight to the regulatory option. And his proponents know this. Two days after his reelection, Greenwire reported that environmentalists “expected direction on climate change to come from the White House and EPA in the near future, not from Congress”; the president’s reelection had “perhaps free[d] U.S. EPA to move regulations forward with gusto.”

The third factor favoring regulatory activism in the new term is, simply put, the fact that the regulatory machinery already is in motion. Far from having to staff up the agencies and begin the regulatory process from a standing start, the second Obama administration inherits agencies that are at cruising speed. Regulations already in the works can be issued on Day One.

Fourth, and related, is the fact that statutes enacted in the president’s first term have left the administration with myriad regulatory obligations to fulfill in the second term. Again, Dodd-Frank and Obamacare are the starkest examples. Dodd-Frank requires federal agencies to

undertake 398 rulemakings, according to the widely followed *Davis Polk Dodd-Frank Progress Report*; of those, only 136 have been finalized, and rules have been proposed for another 133. So regulators owe at least 129 more rulemaking proposals and 262 more final rules. Similarly, the Congressional Research Service identified more than 40 Obamacare provisions that permit or require the issuance of regulations.

Fifth, the administration’s regulators will learn from the mistakes they made in the first term. In 2011, for example, the administration suffered a major setback when the U.S. Court of Appeals for the D.C. Circuit struck down the Securities and Exchange Commission’s new “proxy access rule,” a shareholder rights regulation, in the *Business Roundtable* case. The court held that the agency had failed to analyze adequately the rule’s costs and benefits, as required by an SEC-specific statute. That decision’s shockwaves were felt well beyond the proxy access rule; fearing that other forthcoming rules suffered from similar defects, SEC regulators brought the process “to a near halt, with just 24 agency economists working full-time to provide analyses for dozens of proposed policies, including 28 unfinished Dodd-Frank rules,” according to *Bloomberg Businessweek*. In the president’s second term, many or all of those delayed

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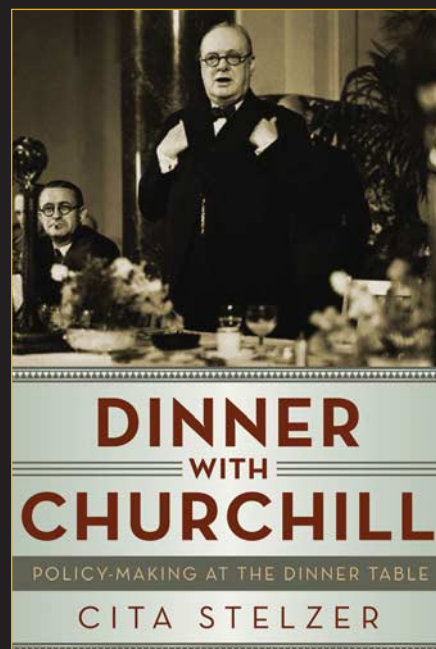
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rulemakings will finally be completed—and this time, the agency’s work may be able to withstand judicial scrutiny.

The final pro-regulatory factor reflects the Reagan-era adage “personnel is policy.” In August, Cass Sunstein left the White House to return to Harvard Law School. Sunstein, the White House’s administrator of the Office of Information and Regulatory Affairs, reportedly had been a primary bulwark against regulatory overreach. To conservatives who know Sunstein first and foremost as a liberal legal scholar and coauthor of *Nudge*—an analysis of how regulators can use the lessons of “behavioral economics” to “nudge” people toward government-favored outcomes—Sunstein was no favorite. But observers more familiar with his full body of work recognized in 2009 that he would be one of the major moderating influences inside the White House. Shortly before the president’s inauguration, the *Wall Street Journal*’s editors gave two cheers to Sunstein, “a regulator with promise—really.”

In fact, Sunstein had played a role in the Reagan administration’s original effort to improve the regulatory process: As a lawyer in the Justice Department’s Office of Legal Counsel in 1981, he helped to draft the landmark regulatory-review executive order, E.O. 12291, which required agencies to submit proposed regulations to OIRA for cost-benefit review. Nearly three decades later, as President Obama’s OIRA administrator, Sunstein seemingly justified conservatives’ (mild) praise, first and foremost by helping to block the EPA’s proposal to substantially tighten ozone standards in 2011. The *Hill*, which described the White House’s decision as a “huge defeat for environmental groups,” reported that Sunstein played a central role in circulating industry criticism of the rule within the White House. The *New York Times* quoted one outside adviser who said that “Cass was itching, itching, itching to” return the ozone rule to the EPA, because he was unconvinced that the rule’s benefits outweighed its costs.

Sunstein was able to succeed as a counterweight to EPA administrator Lisa Jackson and other eager regulators not just because of his national reputation as a scholar, but also because of his deep personal ties to President Obama, dating back to their time together on the University of Chicago law faculty in the 1990s. Sunstein’s successor has not yet been named, but he almost certainly will not have

Sunstein’s professional credibility or personal relationship with the president, and thus will not be as effective in pushing back (always supposing he wants to push back) against the second-term regulatory tidal wave.

When the wave of regulations arrives, industries will turn to the courts to stem the tide. But there is only so much that the courts can do:

The standards governing judicial review of agency action are very lenient, allowing the courts to remedy egregious violations of the law (such as the SEC’s failure to carry out the necessary cost-benefit analysis of its proxy access rule), but otherwise leaving the agencies with vast discretion to make factual and legal determinations.

Ironically, this deference to the Obama administration’s regulators is in large part the result of President Reagan’s success in reshaping the D.C. Circuit, the court primarily responsible for reviewing agency decisions. Much as modern conservative constitutional jurisprudence arose as a response to the liberal excesses of the Warren Court, modern administrative law largely reflects the Reagan administration’s response to liberal judges’ micromanagement of the regulatory agencies in the 1970s.

In a 1977 essay, for example, Antonin Scalia—then a law professor and American Enterprise Institute scholar—spoke for many conservatives when he criticized the courts for “impos[ing] upon the rulemaking process procedural requirements well beyond what was originally envisioned.” A few years later,

when President Reagan appointed him to the D.C. Circuit and then to the Supreme Court, Scalia and his colleagues succeeded in substantially lightening the weight of judicial review on the agencies. But today some analysts, such as George Mason University’s Michael Greve, fear that the pendulum has swung too far in the other direction, so overwhelmingly deferential to federal agencies that it has become “woefully inadequate to the problems of the contemporary administrative state.”

The pendulum may begin to move the other way. Two of the most recent appointees to the D.C. Circuit—Judges Brett Kavanaugh and Janice Rogers Brown, both appointed by President George W. Bush—have offered indications that they are somewhat more willing to scrutinize and



Much of the blame for our predicament falls on Congresses that delegated vast power and discretion to regulators in open-ended statutes such as the Clean Air Act, then failed to rein in those agencies.

overturn the work of agencies; most recently, both judges strongly dissented from the court's decision not to rehear challenges to the EPA's greenhouse gas regulations. Furthermore, the Supreme Court may begin to pare back some of the regulators' advantages. Two years ago, in *Talk America v. Michigan Bell Telephone*, Justice Scalia called on the courts to reconsider whether the federal agencies should continue to enjoy effectively unlimited deference in interpreting their own ambiguous regulations—a stark reversal, given that Scalia himself had authored many of the judicial opinions previously promoting such deference. More recently, the Supreme Court heard oral arguments last week in *City of Arlington v. FCC*, on the question of whether the courts should defer to agencies' interpretations of the statutes defining the limits of the agencies' own authority. But on the whole, barring any major revolution in the law, the courts' application of the standards of administrative law offers only a light brake on the modern reinvigoration of the administrative state.

In fact, the change most likely to occur in the courts is one of judicial personnel, and this too favors the president. President Obama can fill vacant judgeships with judges more deferential to the agencies, judges less likely to overturn the regulatory policies of the next four years. The D.C. Circuit alone will have four vacant seats this year. President Obama has nominated two new judges to that court, and he may well attempt to fill all four vacancies.

He certainly recognizes the D.C. Circuit's critically important regulatory-oversight role. In 2005, as a senator opposing Janice Rogers Brown's nomination to that court, he took to the floor of the Senate and said,

This is a special court. It has jurisdiction that other appeals courts do not have. The judges on this court are entrusted with the power to make decisions affecting the health of the environment, the amount of money we allow in politics, the right of workers to bargain for fair wages and find freedom from discrimination, and the Social Security that our seniors will receive. ... And when [government makes] laws that will spread this opportunity to all who are willing to work for it, they expect our judges to uphold those laws, not tear them down because of their political predilections.

Obama's view of the D.C. Circuit's importance likely has not changed in the last few years; if anything, the court has become even more prominent in debates over regulatory policy. Since striking down the SEC's proxy access rule in *Business Roundtable*, the court has endured a barrage of public criticism from the administration's supporters. The *New York Times's* Floyd Norris, for example, denounced the court's "judicial activists who seem quite willing to negate, on technical grounds, any regulations they do not like." (Three years earlier, by contrast, the *Times's* editorial board applauded the D.C. Circuit for striking down the

Bush EPA's rulemakings.) As regulation takes on a central role in his second term, President Obama may be all the more eager to seat judges whom he trusts not to disturb his regulatory accomplishments.

In the long run, the best check on regulatory overreach is Congress, which can pass laws improving the quality of regulatory agencies' work by requiring them to consider rules' cost and benefits in all cases and by heightening the standards governing the agencies' factual and legal conclusions. To that end, the House Judiciary Committee has produced a number of strong reform bills, such as the Regulatory Accountability Act and the REINS Act. Both passed the House but stalled in the Senate; unfortunately, their prospects likely will not improve in the next four years.

In fact, much of the blame for our current predicament falls on Congress—that is, on previous Congresses that delegated vast power and discretion to regulators in open-ended statutes such as the Clean Air Act, then failed to rein in those agencies even after the dangers of those delegations became evident. And in recent years, Congress has exacerbated those problems by creating new agencies, such as the Consumer Financial Protection Bureau, which enjoy not just open-ended grants of power but also unprecedented insulation against oversight by the president and Congress.

Passing broadly worded statutes, Congress claimed credit for solving environmental, financial, or other policy problems, but handed off to regulators the discretion to tackle those problems however they saw fit. The creation of "independent" agencies did not merely make the agencies "independent" of the president and Congress; they made Congress "independent" of—that is, unaccountable for—the agencies.

In that respect, the best diagnosis of the modern regulatory state can be found in the late liberal legal scholar John Hart Ely's *War and Responsibility* (1993):

It is common to style this shift [from legislative oversight to executive discretion] a usurpation, but that oversimplifies to the point of misstatement. ... Congress (and the courts) ceded the ground without a fight. In fact, and this is much the message of this book, the legislative surrender was a self-interested one: Accountability is pretty frightening stuff.

For the next four years, congressional Republicans will have limited opportunities to check the regulatory state—oversight hearings, holds on executive branch nominations, and budget authority. But looking to the long run, the much more difficult question is how they will reform the regulatory state, under a future Republican president, to prevent us from returning time and time again to this dangerous moment. ♦



Generalissimo Chiang Kai-shek, Madame Chiang, General Joseph Stilwell, 1942

How China Was 'Lost'

And could it have been saved? BY ARTHUR WALDRON

What was called by some “the loss of China”—the unexpected victory in 1949 of the Chinese Communists over the American-backed Nationalists—also destroyed the career of the diplomat John Paton Davies Jr. (1908-1999) as, in the 1950s, he and other like-minded “China hands” were wrongly accused of having been responsible for the defeat. Davies’s China reporting had certainly been pessimistic about Chiang Kai-shek and his Nationalist government—

Arthur Waldron, Lauder professor of international relations at the University of Pennsylvania, is the author of several works on China, and the editor, most recently, of China in Africa.

China Hand
An Autobiography
by John Paton Davies Jr.
Pennsylvania, 376 pp., \$34.95

which Franklin Roosevelt was determined should take its place as one of the “Big Four” after World War II—while consistently upbeat about the Communists, to whom, he forecast, “China’s destiny” belonged.

The charge, however, confused accuracy (the Communists did, in fact, win) with advocacy, needlessly sacrificing one of the ablest diplomats of his generation.

Davies was born in China to missionary parents and educated at the University of Wisconsin, Yenching

University in Beijing (which was built by American philanthropy, abolished by the Communists, and whose architecturally distinguished Chinese-style campus now houses Peking University), and Columbia University. He served in consular posts from 1933 to 1940. In 1942, he was assigned by the State Department to serve with General Joseph W. Stilwell in Chungking (now Chongqing), the Chinese wartime capital.

General George C. Marshall wanted Stilwell, a superb ground fighter, to advise Generalissimo Chiang on military matters and to command Chinese and Allied operations in Burma that would secure Chinese supply lines from India. Stilwell did all of that superbly, but he was a difficult

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man—nicknamed “Vinegar Joe”—who scarcely concealed his contempt for Chiang, whom he called “the peanut.” When Roosevelt sought to make Stilwell commander of all troops, including the Chinese, Chiang objected, and Stilwell was recalled in 1944 amidst bitter controversy, which also touched Davies.

Davies then went directly to Moscow, where he became first secretary, and returned to Washington in 1947 to serve five years on George F. Kennan’s Policy Planning Staff, followed by a year in Germany. The emergence of Senator Joseph McCarthy, who included a number of leading China specialists among his targets, led to Davies’s sidelining to the embassy in Peru. In 1954, John Foster Dulles dismissed Davies from the Foreign Service. His already brilliant career went no further. Thereafter, he manufactured avant-garde furniture in Latin America and traveled the world. He also published two books about China and diplomacy. His clearances were restored in 1969, and he retired to Asheville, North Carolina.

This superb memoir, now thankfully published a dozen years after Davies’s death, can be read in two ways. Viewed as a commentary on Chinese politics, it is very much as one would expect, given Davies’s reputation. It is almost merciless in its chastising of Chiang Kai-shek, of his formidable, Wellesley-educated wife, Mayling Soong, and his smart, constantly intriguing, Harvard-educated brother-in-law, T.V. Soong, as well as their circle of foreign admirers. These included General Claire Chennault of “Flying Tigers” fame, a tireless advocate in Chungking of an airpower-based strategy against the Japanese (anathema to Stilwell), and the patrician journalist and OSS officer Joseph Alsop, among others.

The surprise is Davies’s relentless and telling criticism of Franklin D. Roosevelt, whom he analyzes and criticizes more thoroughly than he does any Chinese actor. It quickly becomes clear that the vagaries of Roosevelt’s ill-considered and amateurish approach to China not only vexed serious Foreign Service professionals like Davies, but also sowed,

early in the war, the seeds of the catastrophe that would overtake China when the Communists came to power some four years after the war’s end.

Most commentary on the Communist victory in China, and how America did or did not contribute to it, concentrates on the end of World War II and the immediate postwar period. To read Davies is to be abruptly reminded how badly China was handled by the Roosevelt administration, with what adverse consequences, and from how early a time. The fundamental problem was that Roosevelt embraced a mythicized version of Chinese reality, in which he identified China as one of the Big Four great powers that would take responsibility for the postwar world, with its leader Chiang (whose name FDR characteristically rendered as “Shang”) in the same class as Joseph Stalin, Winston Churchill, and himself. Strongly promoted by the Chinese government, this was an illusion from which Roosevelt never took the trouble to free himself.

True, Chiang had managed by 1928 to impose a fragile unity on the country. But in 1931 hostilities with Tokyo began when Japanese troops annexed Manchuria (today the three provinces of Northeast China). That struggle became total in 1937, when the Japanese invaded the heart of China to the south, including Shanghai, into the battle for which Chiang threw his best German-trained divisions. When that was lost, a long, bloody fighting retreat ensued—through Nanking (now Nanjing, where the terrible massacre occurred), up the vast Yangtze River to Wuhan (where Davies had been consul), and finally to Chungking in the distant southwest. This city was chosen as last refuge because it lay above the precipitous three gorges of the Yangtze, which were impassable to land forces, and was thus one of the few places in China the Japanese could not reach—except by air: They bombed it regularly.

Such was the dire situation when the United States entered World War II in December 1941. Strategically, China

was a spent force, though fighting continued all over the map. It was incapable of a war effort remotely comparable to what the British, Soviets, and Americans were mounting. Not only that: Its government, never strong throughout the country, had been greatly weakened, while the Communists, who favored low-casualty guerrilla tactics, were growing in strength.

Nor was the United States in a position to offer much help. Washington judged Europe to be the primary theater, which meant that material aid to the embattled Chinese was “only a trickle” during 1942-43, years when aid poured into Europe and the Soviet Union. In 1944, an all-out Japanese offensive came very close to toppling Chiang’s government, and Washington briefly panicked. Yet none of this struck home: FDR’s “geopolitical assumption” remained that China, under Chiang’s leadership, would become a great power after the war.

Such an outcome would have been possible only if America had designated China the primary theater in the war against Japan: if they had landed hundreds of thousands of troops there, systematically built up Nationalist forces, and moved deliberately from south to north, retaking the vast continent of China, mile by mile and battle by battle, as was done in Europe. That approach was discarded, however, in favor of the far less casualty-intensive strategy of island-hopping and bombing Japan.

Instead of joining the war in China, the best the administration could do, as Davies observes, was “to present Chiang Kai-shek with a high-ranking military officer as adviser . . . an earnest of large-scale support to come.” Rather than grappling with the inescapable issues that Davies and others were already pressing—e.g., how to work with a faction-ridden Chinese government whose armies were being bled white; whether to adopt a China-based or Pacific-based strategy against Japan; how to deal with the inevitable territorial demands Stalin would make, certainly extending to Manchuria—

The President put great store by getting along with the Generalissimo.

His vision of the Big Four gaining victory and dispensing a just peace depended on, he thought, avoiding unpleasantness with Chiang.

To make matters worse, Roosevelt was “a politician not an executive,” and was accustomed to undercutting and bypassing his formal officialdom, treating even his secretaries of state as “greeters” while he and Harry Hopkins ran foreign policy.

Not surprisingly, the most compelling reading in this memoir is Davies’s description of how, exactly, this was done. Particularly delicious is his rendering of the remarkable procession of personal envoys—one of Roosevelt’s favorite expedients—who regularly arrived in Chungking with utterly vague remits, while keeping the American premise of China’s great-powerdom inflated, creating unrealistic Chinese expectations, and utterly confusing lines of responsibility and command.

The first was Lauchlin Currie, “a brisk, little, rimless-bespectacled Harvard economist who had been acquired by Roosevelt as a special assistant.” When Davies came to know him in Washington, Currie was developing “an interest in Chinese affairs . . . and took to phoning me . . . to ask for information or my comments on Chinese events. I thought it odd that he should occupy himself with matters so evidently outside his expertise. But then this spontaneous straying into other jurisdictions to dabble therein was characteristic of the helter-skelter Roosevelt administration.”

Currie was eventually sent to Chungking as a “special adviser” to Roosevelt. On the basis of the most superficial inspection, he recommended “the recall of Stilwell and [Ambassador Clarence E.] Gauss.” Not only that, he “considered himself to be the most suitable replacement for Gauss, a dream that was not to be realized.”

Then, the 1940 Republican presidential candidate Wendell Willkie turned up, “visiting China on a round-the-world junket meant to fabricate an image for himself as a man of vision.” General Chennault prevailed upon Willkie to carry a letter from him to

Roosevelt asking for “105 fighters, 30 medium bombers, [and] 12 heavy bombers,” with which Chennault promised to accomplish “the downfall of Japan.” General Marshall dismissed this as “just nonsense,” but the approach appealed to FDR as a quick and easy solution to an otherwise impossible problem.

In 1943, Davies and Stilwell attended the Cairo Conference, at which Chiang joined Churchill and Roosevelt to discuss the Asian theater. Churchill, who was ready to let China fall, tried without success to persuade Chiang and his wife to go sightseeing while the others met. Roosevelt was solicitous of the Chinese leader. Stilwell understood this method, confiding to his diary, “The Squire [FDR] was in good spirits, looking for short cuts.” Davies was appalled to find that FDR was dispensing with any State Department aid in translation or negotiation. Ignored at the conference was his colleague, Willys Peck, who “spoke Chinese fluently, for years had been acquainted with Chiang, and was the soul of discretion.”

Without the inhibiting presence of a knowledgeable American at his side, Roosevelt plunged into cultivation of Chiang and soliciting the Generalissimo’s collaboration in building a Rooseveltian world order. Madame Chiang . . . bedizened as for a cocktail party . . . interpreted at the private meeting between FDR and her husband.

The president’s utterly “dilettantish foreign policy” became even clearer when some of the Americans were treated to an informal session with him:

We heard a good deal about his ancestors. The one who went to China, made a million, returned home, lost it in a coal mine investment, went back to China, made another million, went home and put it in railroad stock which did not pay a dividend until two years after his death. Told with much laughter.

Davies and Stilwell left confused and depressed.

It was part of the politician’s brush-off technique. He never directly

came to grips with the real subject at hand—what did he want the General to say to Chiang[?] . . . What instructions as to policy toward China did he have?

In the car on the way back to the Mena House hotel, Stilwell “held his head in his hands.”

When they returned to Chungking, the flow of emissaries continued. Vice President Henry Wallace arrived. Roosevelt had ostensibly sent him to help with the problems between the Nationalists and their Communist rivals. Davies explains that the real point of the mission was to ease Wallace out of the United States so that Roosevelt could “lay the ground for unloading him as running mate at the upcoming Democratic convention.” Wallace, too, recommended the removal of Gauss and Stilwell.

Following Wallace, and as FDR’s “personal representative for economic matters,” was Donald Nelson, deposed head of the War Production Board, whom the president also did not want in Washington. Harry Hopkins told Davies that he was perplexed as to how the “personal representative” might actually occupy himself, but added that “Nelson would be happy if the Chinese provided him with four or five girls—that would keep him quiet.”

Most disastrous of all of Roosevelt’s envoys was Patrick J. Hurley, an Oklahoma lawyer who had been Herbert Hoover’s secretary of war. An honorary major general in the National Guard who was given to Choctaw war whoops and other “flamboyant displays of mesquite, tomahawk, and six-shooter culture,” he floundered hopelessly as he tried to make peace between the irreconcilable Communists and Nationalists. But, inexplicably, Roosevelt radioed Hurley late in 1944: “Your intimate knowledge of the situation there both from the military and diplomatic stand-points . . . eminently qualifies you to be Ambassador to China.” And so it was. Had Roosevelt consciously sought to ruin his China policy through incompetent staff, he could scarcely have done worse.

As Davies reflected, contemplating

the sorry group of political outcasts with whom he had to work, “China is apparently to the American political scene what Siberia is to the Russians. Only, Roosevelt’s technique is quicker and more humane.”

Eventually, Stilwell was replaced by General Albert C. Wedemeyer, and Davies went to Moscow. Relations between the Chinese and Americans in Chungking became less “rancid,” but the basic problems remained, particularly that of Soviet ambitions.

To Davies’s disgust, the dying Roosevelt had, at Yalta in February 1945, endorsed Stalin’s postwar occupation of Manchuria, something on which Chiang would have choked, given that Japanese annexation of the territory had been the cause of war with Japan in the first place. Moreover, as Davies observes, Stalin would have taken it in any case; blessing such an action served no American end.

Davies understood, as well, that Soviet-occupied Manchuria would become a sanctuary for the Chinese Communists, and perhaps a Soviet client state, the possibility of which FDR seemed entirely unaware of. So thoroughly did Yalta shred the myth of China as one of the Big Four—a myth Roosevelt had been at pains to preserve—that a typical Rooseveltian ruse had to be invoked: Chiang was not to be told of the agreement’s full contents until the time was judged right.

As it turned out, the Nationalist attempt to retake Manchuria in the first phase of the Chinese Civil War would prove their strategic undoing, the great mistake that led to the loss not only of that territory, but of the rest of China as well.

Here we are brought, finally, to the once-politically-explosive question of what, if anything, the United States might have done differently that could have helped spare China the bitter fate of Communist rule, which Mao’s biographer Jung Chang estimates cost some 70 million lives.

Questions over this ruined Davies’s career; we cannot leave the man without considering them.

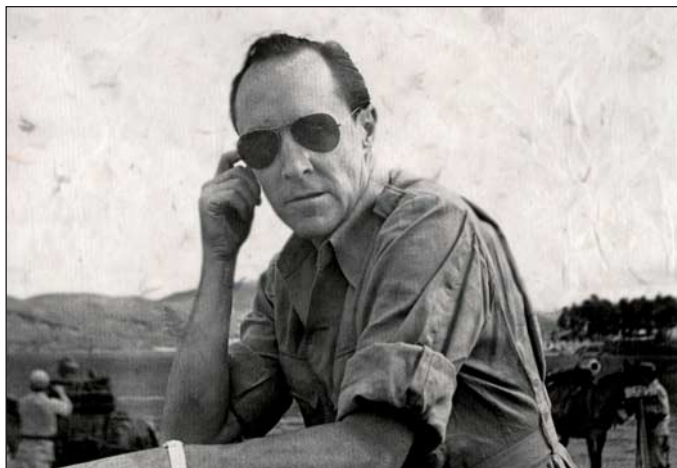
Like many China hands of his generation, both diplomats and journalists, John Paton Davies certainly had a higher opinion of the Communists than he did of the Nationalists. The Nationalists he knew intimately, at first-hand, in intrigue-ridden and climatically oppressive Chungking. The Communists he knew more through reports and through one visit he made

China, he took Communist affirmations of pro-American and democratic principles seriously enough to consider whether it might be possible to wean them from Moscow and win them over. He was distressed, when Mao and his colleague Zhou Enlai expressed a desire to visit the United States, that Roosevelt took no action: Any contact with the Communists ran afoul of the generalissimo.

The Communists were not only more modern than the Nationalists, thought Davies, they were also less autocratic. Late in 1945, when Davies was already in Moscow, Mao had given Reuters an interview in which he promised a fully democratic, secret-ballot, multiparty system should he come to power. Many foreigners were persuaded by this. So, too, were Chinese. Davies saw the Communists trending toward “more or less democratic nationalism.”

Such views were widespread at the time, particularly within the Foreign Service and among those associated with General Stilwell. They were, as is clear with more information today, incorrect in certain ways. But they were long influential. John Fairbank, who taught this reviewer at Harvard, had come to the same conclusions during his time with the OSS in China, confessing to a close colleague, “I’ve supported these people since the 1940s.” (His break with the Communists came only with the Tiananmen massacre of 1989.)

The positive view of Chinese communism was largely silenced in America during and after the McCarthy period, only to regain life as controversy mounted over the Vietnam war. In 1972, the journalist Barbara Tuchman won the Pulitzer Prize for her *Stilwell and the American Experience in China: 1911-1945*, very much the right book at the right time. There, and even more explicitly in a 1972 article in *Foreign Affairs* (“If Mao Had Come to Washington: An Essay in Alternatives”),



John Paton Davies Jr.

to their wartime redoubt, Yen’an (now Yan’an) in the Loess Plateau region of the northwest, where bracing clear weather was more the order.

Moreover, Davies was convinced that what was happening in China was more than a war. As he later put it when explaining why a Marshall Plan could not save the Nationalists in China as it did Western Europe, the country was in the throes of a “profound political, economic, and social revolution.” For that reason, Davies never saw Chiang as personally responsible for the problems of his government. Their ultimate source was China’s obsolete social and political structure, which would frustrate any attempt at mobilization or national reconstruction. Chiang was “a captive of the sorry forces he manipulated.”

Davies supported the creation of the American observer mission in Yen’an in July 1944, and the supply of weapons to the Communists as well as to the Nationalists. While in

Tuchman argued that, by failing to embrace Mao and his colleagues in the war and its immediate aftermath, the United States had lost the chance to help power a liberal, modernizing, and pro-Western People's Republic of China, while avoiding the wars in Korea and Vietnam.

Davies's wartime writings, along with those of some of his colleagues, became fundamental texts of this view—which, for a while, ruled among academics and the American foreign policy elite. Davies, however, never embraced the “lost chance.” Clearly, he was bitter about the bungling of the Roosevelt administration, with its single-minded concentration on the Nationalists—not to mention its disgraceful treatment of him. But readers of this volume will clearly understand that Davies's primary concern was keeping the Soviet Union from extending its sway into northern China, possibly even to Peking, and forestalling the emergence of a Sino-Soviet bloc.

Thus, he writes:

In retrospect, the idea of politically capturing the Chinese Communists was unrealistic. It reflected my underestimation of the Communists' commitment to ideology. Better grounded was the calculation that American aid to the Chinese Communists, who I assumed would take over China in any event, could free them of material dependence on the Soviet Union and thereby reduce the Kremlin's influence on them.

China Hand is absorbing reading, characterized by a clear style, rigorous and razor-sharp analysis, and steady irony. It is also a very important contribution to the underresearched history of American China policy in wartime. Davies's story suggests that the roots of the Cold War in Asia lie very much in failing, from the outset, to consider the postwar interaction of the Soviet Union and China. He does not say it, but others have observed that if Washington and Moscow had agreed on clear spheres of influence in China (and Korea), as they did in Europe—in effect partitioning China and confining its leaders to set postwar zones (roughly the Communists to Manchuria, the

Nationalists to the south)—a far more stable and less troubled region would have been the result.

Franklin Roosevelt thought of China as a power already securely held by “Shang.” But John Paton Davies recognized how tenuous was the generalissimo's hold on power, while understanding as well that once the Japanese were defeated, China

would become a power vacuum, tempting to Moscow, and beyond the capability of the Nationalists to control. In that sense, the collapse of China into communism was aided by the incompetence of Roosevelt's policy.

But *China Hand* must be digested by anyone interested in China, then or now. We still live, after all, in an age of myth about China. ♦



Rational Man

The skeptic who scandalized Victorian America.

BY KATHERINE MANGU-WARD

Robert Ingersoll was fat. The Great Agnostic, as he was known in his day, was so portly that critics sighed over the “spectacular auto da fé” he would have made if set alight for heresy—as he surely would have been in an earlier era.

Speaking to sold-out crowds around the nation at the turn of the 19th century, Ingersoll argued against belief in God, poked fun at religious authority, and gently introduced a skeptical American public to the idea that humans might be related to apes. Along the way, the jurist and Republican party kingmaker revived the reputation of another great doubter, Thomas Paine, restoring him to his rightful place in the Founders' pantheon.

Now largely forgotten himself, Ingersoll once rivaled Mark Twain in popularity on the lecture circuit during the Golden Age of Freethought. A small but surprisingly influential cluster of fans and followers have kept Ingersoll's memory alive, ranging from Clarence Darrow to Eugene Debs to Penn Jillette, the magician. But in her light, readable new biography, Susan Jacoby does her best to preach the Ingersoll gospel to the larger audience he deserves.

Katherine Mangu-Ward is managing editor of Reason magazine.

The Great Agnostic

Robert Ingersoll and American Freethought

by Susan Jacoby

Yale, 256 pp., \$25

At an American centennial oration in Peoria, Ingersoll cheerfully celebrated a nation whose Founders had “retired God from politics.” His praise may have been premature, but Ingersoll certainly did his part to chip in for God's gold watch and pension.

The son of an abolitionist Congregationalist pastor raised mainly in Illinois, Ingersoll studied law with his brother, served as a colonel in the Civil War with the 11th Illinois Cavalry, and rose to prominence as a Midwest orator in the 1860s and '70s, equally at home in the courtroom, the revival tent, and the velvet-upholstered auditorium.

In June 1876, Ingersoll burst onto the national Republican scene with his nominating speech for James G. Blaine. Known as the “Plumed Knight” speech, the stirring address became the model for Franklin Roosevelt's 1924 “Happy Warrior” speech nominating Al Smith. Press accounts were swooningly enthusiastic, even by the less-than-objective standards of the day. (“When he finished, his fine, frank face as calm as when he began, the overwrought

thousands sank back in an exhaustion of unspeakable wonder and delight.”)

While today’s GOP is associated with public displays of faith, the Republican party of Ingersoll’s day was more likely to be the home of free-thinkers, such as the churchless Abraham Lincoln. The American public wasn’t ready for overt atheism in elected or appointed office, but Ingersoll’s talent on the stump made his endorsement valuable. Jacoby persuasively argues that Ingersoll fits into the classical liberal tradition, a thread that remains visible, if controversial, in the fabric of the modern Republican party.

And he used his influence with powerful Republicans to further his own causes, including support for the gold standard and for women’s rights. In 1877, Ingersoll convinced President Rutherford B. Hayes to drop an obscenity prosecution against the publisher of the freethinking *Truth Seeker*, which had run afoul of the Comstock laws for publishing information on birth control.

We have come some distance since Theodore Roosevelt called Thomas Paine a “filthy little atheist”—thanks, in part, to Ingersoll’s aisle-crossing labors—but the public remains wary of godless politicians. A 2011 Pew Research poll found that 61 percent of respondents would be less likely to vote for an atheist candidate. The same year, Gallup found that only 49 percent of voters would vote for an atheist for president, even if he were a “well-qualified” candidate. And a 2003 study found that 48 percent of Americans would disapprove of their child marrying an atheist.

But Ingersoll made atheism palatable, even in a much more devout time. (Though known as an “agnostic,” Ingersoll used the term interchangeably with “atheist,” citing the impossibility of proving a negative in either case.) He did this, in no small part, by being a nice guy. By all accounts, he was loving and loyal to his wife and two daughters. He threw fun parties at his Manhattan townhouse. His household finances were conducted in an astonishingly openhanded manner for a Victorian patriarch: Cash was kept in an unlocked drawer and family members (women!) were encouraged to make withdrawals as needed.

His speeches were studded with jokes that played to American sensibilities: While explaining Charles Darwin’s still-controversial theory of evolution, he speculated how tough it would be for blood-proud European aristocrats to learn they were descended from “the duke Orang Outang, or the princess Chimpanzee.” Far from finding the prospect of a godless universe depressing, Ingersoll considered the theory of evolution a desirable replacement for the story of the Fall.



Robert Ingersoll

I would rather belong to that race that commenced a skull-less vertebrate and produced Shakespeare, a race that has before it an infinite future, with an angel of progress leaning from the far horizon, beckoning men forward, upward, and onward forever—I had rather belong to such a race . . . than to have sprung from a perfect pair upon which the Lord has lost money every moment from that day to this.

Yet in an otherwise pleasant book about an appealing man who lived in interesting times, Susan Jacoby’s frequent interjections (usually in footnote form) on current American politics are jarring. In the introduction, she suggests that Ingersoll “could never have imagined” the prevalent

role of religion in 21st-century American political life, and that he would be “astonished” by the current political scene. She cites an intemperate remark from Rick Santorum about the separation of church and state: The very concept, as expressed in John F. Kennedy’s speech to Baptist ministers in Houston in 1960, makes Santorum want to “throw up.”

It would take a great deal more than that to astonish a man as widely read and traveled as the Great Agnostic, and Santorum is hardly a spokesman for the mainstream on this issue. Jacoby even makes snippy remarks about the atheistic origins of the first name of former Texas representative Ron Paul’s son, Kentucky senator Rand Paul (who denies, by the way, that he is named for Ayn Rand).

Her afterword is a lecture directed at the New Atheists, in which she takes the likes of Christopher Hitchens and Richard Dawkins to task for failing to include Ingersoll among their credited influences. She accuses them of ignorance and bias against Ingersoll because he is difficult to fit into our modern political categories—all in the kind of hectoring tone Ingersoll himself eschewed, and to his great benefit.

When Hitchens died in 2011 of esophageal cancer, raging and grumping all the way to his grave, he was compared (favorably and unfavorably) to Thomas Paine, who died impoverished and alone, with rumors of suicide and conversion further besmirching an already damaged reputation. Such deathbed mythology has long plagued prominent atheists.

Perhaps mindful of Paine’s example, however, Ingersoll was determined to use his own death to make his point one last time. As the heart disease that had long plagued him began to take its toll, Ingersoll settled in at home. Surrounding himself with family—he got along famously with his in-laws, freethinkers who later curated his papers and tended his legacy—Ingersoll smoked cigars, played billiards, and took one last morning nap before expiring with his wife by his bedside.

The *Chicago Tribune*’s obituary headline: “Ingersoll Dies Smiling.” ♦

A Vessel's Voyage

The journey of a cameo, from Cleopatra's Egypt to modern Italy. BY AMY HENDERSON

Bringing an inanimate thing to life has tantalized storytellers from Aeschylus (*Prometheus Bound*) to Mary Shelley (*Frankenstein*) to Mel Brooks (*Young Frankenstein*). But when the life spirit is encased in a mesmerizing artifact rather than a rampaging monster, the goal is to inject the object with a compelling life story rather than to inspire man-eating romps. In the case of the Tazza Farnese, an ancient libation bowl carved from banded agate, the story begins in Ptolemaic Egypt and continues until today. But like the mythological monster, the Tazza's spirit is deadly: Its exterior is carved with the head of Medusa, whose gaze was said to turn people into stone.

Over the past decade, cultural historian Marina Belozerskaya has invented a fascinating career doing the opposite of what most historians do: Rather than the infinity-in-a-grain-of-sand approach, she casts her web broadly across centuries and cultures. Describing her previous book, *The Medici Giraffe*, she explained that she “looked for stories that would allow me to reconstruct in vivid detail the feel of particular moments in history.” What interested her was “telling . . . stories set in different times and places” so that she could untangle and decode the cluttered past. *The Medici Giraffe* consisted of eight separate biographical tales, beginning with Ptolemy in Egypt in the third century B.C., and ending with William Randolph Hearst's San Simeon in the 20th century. In *The Arts of Tuscany: From the Etruscans to Ferragamo*, she similarly created a broad-ranging landscape encompassing time, geography, and the arts.

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Medusa's Gaze
The Extraordinary Journey of the Tazza Farnese
by Marina Belozerskaya
Oxford, 312 pp., \$24.95



Belozerskaya's newest exploration, described as “the first book-length account of the ‘life’ of this renowned masterpiece,” is an odyssey the author began after seeing the Tazza at the Museo Archeologico Nazionale in Naples. Entranced, she decided to “try to recapture something of that sense of wonder and greed that the Tazza incited in those who were able to own it.” The result is “a cultural history of the vessel.” Because of the foibles of time, the story has huge gaps, but Belozerskaya stitches it all together by focusing each chapter on owners who “gave it its shifting meanings.”

The Tazza's origins were likely in Alexandria, during Cleopatra's rise and fall as queen of Egypt (69-30 B.C.). The largest ancient cameo known today, it was carved out of sardonyx, and includes figures that depict a temporal allegory of the Nile and of creation. It is supposed that Cleopatra used the Tazza to dazzle her guests, since “its style, quality, and subject matter all suggest

that it was likely made for and used at the Ptolemaic court.”

After Cleopatra's death, the Tazza's trail probably included Rome and Constantinople; the author thinks it possible that, in the late fourth century, it “went through a Christian conversion” when paganism was outlawed. The Tazza then took on an identity not as a sacred object of antiquity but as a historical and cultural artifact rooted in classical Roman life. It is also probable that it was used as a Christian chalice. In 1204, Constantinople was besieged by crusaders, and the Tazza likely was pillaged. Frederick II, the Holy Roman Emperor who aimed to revive Roman rule across the Mediterranean, was said to be a great lover of cameos and apparently bought the Tazza for 1,230 ounces of gold in 1239. Upon his death in 1250, we lose track of the Tazza for the following century-and-a-half—until its reappearance in Timur in 1401, when the Mongol warlord Tamerlane acquired it.

Records are murky, but the bowl next appears in the 1450s, when a merchant arrived in Naples with the Tazza in his baggage. He sold it to King Alfonso of Aragon before, at some point over the next two decades, it came into the possession of Lorenzo de' Medici. In 1537, the Medici pope died, and a new pontiff, Alessandro Farnese, ascended the throne as Paul II, retaining ownership of the bowl now known as the Tazza Farnese. The Tazza remained hidden from view for the next 200 years, until the Farnese treasures were transferred to the Royal Gallery in Naples. With the excavations at Herculaneum, and later at Pompeii, Naples was emerging as a center for learning and “Grand Tourists.” An extensive account of the bowl was published in 1738, and its display became so popular that it was touted as the most spectacular artwork in Southern Italy.

During the next century, the Tazza changed hands periodically until 1860, when it was placed in the Museo Archeologico Nazionale. But—and with the Tazza there always seems to be a “but”—the bowl was nearly destroyed when a museum night-watchman attempted to steal it in 1925. The robbery was botched, and the bowl shattered when

it was dropped. Its shards were scattered across the museum floor, but all the pieces were found, and the Tazza was successfully restored. It remained unscathed during extensive Allied bombing in World War II, when it was encased in a padded, zinc-plated box and secreted into a cavity of the museum's massive walls.

In recent years, the Tazza's fame has lessened. It is currently displayed in a small suite on the Museo Archeologico's ground floor, but the public flocks, instead, to the museum's frescoes of Pompeii and Herculaneum. Contemporary taste has also rendered ancient gems and hard-stone vessels less fashionable

than the paintings that now dominate the art world.

Marina Belozerskaya has made a well-researched and welcome contribution to Tazza scholarship. With much direct evidence missing, she has still connected the dots of this artifact's remarkable journey. Yet her method of rehashing history does prove tedious as the story plays out, century after century: The rhythms of history are in constant flux, and the book would have benefited from a livelier sense of change in time and place. Instead, there is a rather bland uniformity of style. Through it all, however, the Medusa's gaze remains unperturbed. ♦



Between the Lines

What is the meaning, and intent, of Hebrew Scripture?

BY JUDAH BELLIN

Yoram Hazony is frustrated. A scholar at the Shalem Center in Jerusalem, he has sought to bring Judaism in conversation with Western thought. The West, he believes, has not returned the favor.

Indeed, Hazony believes that academic opinion has turned against the Hebrew Bible. Neither professors nor their students, he notes, believe it contains any "ideas of worth and interest." He traces this idea back to the Enlightenment-era thinkers who (according to Hazony) falsely distinguished the Greeks' reasoned approach to life from that of Scripture. He cites Kant, who saw the Hebrew Bible as "a collection of mere statutory law," and Hegel, who depicted ancient Judaism as "abjectness where no reason was." In Hazony's account, this attitude informed the German universities' approach to the Bible,

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The Philosophy of Hebrew Scripture

by Yoram Hazony
Cambridge, 286 pp., \$24.99

which in turn informed the approaches of American and British institutions.

Hazony seeks to undo the damage by reading the Hebrew Bible for philosophical insight. He believes this approach is groundbreaking. However, though Hazony promises readers that they will "never read the Bible the same way again," he merely returns to an older tradition. Thomas Hobbes and John Locke, for instance, saw Hebrew Scripture as a source of political guidance. In his *Leviathan*, Hobbes derives the sovereign's absolute power from Samuel's declaration that kings have every right to "take your sons . . . take your daughters . . . take the tithe of your corn and wine." Likewise, in his *Second Treatise*, Locke uses the Bible's description of Adam to argue that, in his original state, man was "capable of . . . govern[ing]

his actions according to the dictates of the law of reason."

What is new is today's cultural elite's dismissal of the Bible as supernatural hokum. Hazony believes they misunderstand Scripture's purpose; in his conception, Scripture has a distinctly political purpose. To demonstrate this point, he focuses on what he calls the "History of Israel," which comprises the Pentateuch, as well as the books of Joshua, Judges, Samuel, and Kings. The authors, Hazony believes, began with the creation myth and ended with the Babylonian exile in order to inform the Jewish people of their place in history as well as their mission. They designed this work as a common framework for the dispersed Israelites.

But Hazony subsequently seems to change his opinion of the Bible's purpose. Later on, he claims that Hebrew Scripture seeks to explain history through the lens of philosophy. He argues that God's message is a philosophical one since it reflects a particular conception of the Good. Since the Good is universally true, Hazony continues, it follows that God's message in Hebrew Scripture applies to all humanity, not just the Jews. Thus, in contrast to his earlier argument, Hazony claims here that Hebrew Scripture is not a parochial document.

Hazony does not address the contradiction; nor does he address a pressing question his new interpretation raises: If Scripture merely expresses universal philosophical truths, why should it hold any more sway over the Jewish people than, say, Plato's *Republic*?

Answering this question requires serious introspection, but Hazony offers none. He instead launches into philosophical "case studies." His attempts at outlining Scripture's "truths," however, fall short: One cannot entirely encapsulate Scripture's philosophy because it sends conflicting messages about the best life for man. It resists generalization. Hazony's assertion that Hebrew Scripture shows us "not what happens, but what always happens" rings false, as very rarely does anything occur with perfect consistency in the Hebrew Bible.

He first argues that the Bible lauds an "ethic of the shepherd." In his account,

Abel, the first shepherd, defies God's directive to work the land. Rather than reprimanding Abel for disobedience, though, God makes His preference known for Abel's livestock offering. To Hazony, this indicates that God favors open-mindedness, creativity, and independence; shepherds, who stayed outside the agricultural systems that sustained the surrounding empires, embodied these virtues. Hazony thinks this explains why the most important biblical protagonists—Abraham and his sons; Joseph and his brothers; Moses; David—are shepherds.

As the story of Abraham suggests, however, Hazony overstates his case. While Abraham displays independence by challenging God's decision to overturn Sodom, in most other instances he is quietly obedient. Indeed, he unquestioningly accepts God's most onerous commands: He abandons his father's home for an unfamiliar land, leaves that land for Egypt during a famine, and prepares to sacrifice his firstborn son. The shepherd of Hazony's imagination would challenge God on any of these commands—but Abraham, of course, does not. Neither God nor the narrator, however, chastises him for his inaction. By repeatedly showing Abraham's passive acquiescence, the Bible seems to teach us that submission is sometimes virtuous.

Another scriptural lesson cited by Hazony is: "In accepting an offer of hospitality, one takes the first step toward forfeiting one's freedom." Accordingly, he refers to numerous stories in which hosts take advantage of their guests. But this, too, is an overstatement, as it ignores the many unmistakably positive depictions of hospitality, such as Abraham's welcoming three men into his tent after his circumcision, Rebecca's caring treatment of Abraham's servant Eliezer as he seeks a wife for his master's son, and Rahab's hiding of Israelite spies in Jericho.

Scripture does not teach that hospitality is inherently problematic, but that its quality is contingent on the host's character. Though this lesson is less provocative than Hazony's proclamations, it is truer to the text's plain meaning.

Some of Hazony's claims are not

only overgeneralizations but mistakes. When discussing the political theory of Hebrew Scripture, he contends that the "biblical ideal" is a "single, limited state . . . in which the king will be chosen from among the people and be among them in spirit." To the contrary, the Bible makes its distaste for kings clear. In the Book of Samuel, God states that the people's request for a king indicated that they had "rejected me as their king." God demands self-rule according to his guidelines, as God's moral law holds an exclusive claim to sovereignty. Accordingly, the prophet Samuel rebukes the people for surrendering their freedom to an all-powerful earthly king.

Ultimately, Hazony's most effective arguments are his narrowest. He draws a compelling contrast between Abraham, whose first action is to abandon the city of his birth, and Socrates and Aristotle, who considered themselves inextricably bound to the state. In Hazony's reading, God wishes to teach Abraham that no earthly institution holds

an exclusive claim to his soul; he owes his allegiances to a higher order. Likewise, in a chapter on Jeremiah, Hazony shows that, like the Greeks, Jeremiah believed that much of humanity lived within an illusory reality. He exhorts them to "inquire of the paths of old which way is the good" in order to break through their delusions.

I can't help but wish that Hazony had dedicated more time to these focused arguments than to his sweeping claims about Scripture's "purpose." But he acknowledges that *The Philosophy of Hebrew Scripture* is meant not to provide conclusions but to spark a renewed relationship with the text. At its conclusion, he asks us to view the Hebrew Scripture as "a family or school of viewpoints, each of which approaches truth from a different place," rather than a "fixed body of propositions." Though this is not exactly harmonious with Hazony's attempt to discern the Bible's consistent truths, he is correct in arguing that the Hebrew Scripture invites unceasing inquiry. ♦

BCA

Black Comedy

Quentin Tarantino's version of history as farce.

BY JOHN PODHORETZ

Like Steven Spielberg, Quentin Tarantino has now made an American slavery film to go with his Holocaust film (*Inglourious Basterds*, 2009)—and like Spielberg, he secured Best Picture nominations for both of his epic journeys into shameful human history. But while Spielberg treats his topics with terrified reverence, Tarantino does not. Quite the opposite. Their grand themes are deployed almost exclusively to provide shock value.

By using these unimaginably horrific examples of human evil and suffering

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Django Unchained
Directed by Quentin Tarantino



as the backdrop to visceral revenge fantasies, Tarantino gives undeniable oomph and emotional resonance to his true lifelong purpose. That purpose is really quite astonishingly narrow: paying homage to the disreputable exploitation films of the 1960s and 1970s he loves so much. A peculiar ambition, to be sure, but becoming famous and respected and garlanded for riffing off disreputable junk must have its perverse rewards for Tarantino, who is among

the most perversely talented movie-makers in movie history.

The junk films that inspire him—spaghetti Westerns, Japanese and Hong Kong gangster flicks, European sex romps, American blaxploitation pictures—were in such bad taste that they went beyond conventional categories into some new realm. These movies really did make explicit all the things that had long been implicit in the cinema: the charged pleasure that comes from watching staged violence, the crazed joys of plotted revenge, a woman's breasts. But all those transgressions crossed into the mainstream fairly quickly. The literally titled *Bad Taste*, made in New Zealand, was the can-this-really-get-any-worse outrage of 1987; now its director, Peter Jackson, makes drippingly sentimental films about hobbits in the Shire with \$300-million budgets.

When he was starting out in the early 1990s, Tarantino took the American cinema to places it had never been. He had a character cut off a guy's ear while dancing to "Stuck in the Middle with You" in *Reservoir Dogs* (1992). In *Pulp Fiction* (1994), he had John Travolta's character plunge a hypodermic needle into Uma Thurman's heart to keep her from dying of an overdose, and he had a vicious black crime-boss tied up and raped. Tarantino wanted the violence to sting, to provide a buzz like touching a tongue to a nine-volt battery, and he succeeded.

These weren't the only elements of his movies that caught everyone's attention. It was his ability to mix such barbarities with amusing bits of repartee, funny exchanges, and hyper-wordy monologues that gave them their special kick. But after he staged his one-man assault on the American cinema, he struggled. He made the languorous *Jackie Brown* in 1997, which I quite liked for its evocation of middle-age disappointment, but others did not. And he struck out entirely with the two *Kill Bill* films in 2003 and 2004, in which Uma Thurman slaughters many people and is tortured by many others for a total of four hours. Nothing Tarantino did in this misguided project was all that

surprising, and the plot motivation—a woman trying to get her daughter back from a kidnapping father—was, in the end, little more than you'd get in a Lifetime movie.

Then, in a burst of demonic inspiration, came Tarantino's decision to make brazen use of historical calamities to deepen his tales of revenge. By doing so, he would test every possible limit of taste, as his idols had. His method was perhaps even more transgressive, though: He turned topics that present-day standards of taste and comportment now deem fitting only for low-lit exhibitions staged at funereal museums into blood-soaked frenzies.

In *Inglourious Basterds*, a crew of Jewish soldiers hunts down and tortures Nazis during World War II in preparation for what may be the greatest plot twist in modern cinema—a twist so startling that, even though the movie came out years ago, I don't feel comfortable repeating it here.

In *Django Unchained*, Jamie Foxx plays the title character, a tortured runaway slave who, in 1858, enters the service of Dr. King Schultz, a German dentist turned bounty hunter. Schultz is played by Tarantino's greatest discovery, Christoph Waltz, an unknown Austrian TV actor who won an Oscar for playing the multilingual Nazi Jew-hunter in *Inglourious Basterds*. Waltz is, if possible, even better in *Django*, the first Tarantino movie that actually attempts a bit of character development and moral growth amid the mayhem.

Django and Schultz become partners and devise a complex scheme to liberate Django's slave wife from a notorious Mississippi plantation. It is the home of an infernal would-be charmer named Calvin Candie (Leonardo DiCaprio), whose primary pleasure is watching slaves try to beat each other to death. The narrative trick up Tarantino's sleeve in the last third of the movie (comparable to the one in *Inglourious Basterds*), involves Samuel L. Jackson, who plays a 76-year-old slave at the Candie plantation. He proves to be a very formidable and dangerous player indeed.

The mark of how audaciously (or nihilistically) Tarantino turns history to

his own pulpish ends is this: Ultimately, both *Inglourious Basterds* and *Django Unchained* are actually comedies. Stanley Kubrick once said of the most revered film of our time: "The Holocaust is about six million people who get killed. *Schindler's List* was about six hundred who don't." That brilliant bit of criticism is really made flesh by Tarantino's wildly irresponsible but also irresistible romp, *Inglourious Basterds*, which truly is the Holocaust with a happy ending.

Django Unchained is, at times, out-and-out farce. Don Johnson appears as a plantation owner made up to look exactly like Colonel Sanders of KFC fame, who attempts to lead an early version of the Ku Klux Klan. Their raid is foiled when none of them can see through the holes in their hoods, and they fall to squabbling. Later, an escape right out of a Road Runner cartoon is made through the fortuitous use of some dynamite.

The relationship between Schultz and Django is out of an old-fashioned buddy movie. Indeed, *Django Unchained* is an unacknowledged remake of a little-remembered 1971 con-artist movie called *Skin Game*, with James Garner and Louis Gossett Jr. In *Skin Game*, set in the 1850s, Garner and Gossett are friends—Gossett was born a free man in New Jersey—who trick plantation owners by having Garner sell Gossett to them and then securing his escape.

Skin Game is gentle and surprising, defiantly odd; it was probably the inspiration for another peculiar and memorable white/black con-artist buddy comedy 20 years later called *Diggstown*, which also stars Louis Gossett Jr. By contrast, there's nothing gentle about *Django Unchained*, in which a gunshot is inevitably followed by a flying piece of flesh or innards. Tarantino is still the giggly teenager who really, really wants to gross you out, and if you gross out easily, you must avoid this thing at all costs. But if you don't, and if you don't mind your history revised and rewritten and reconceived without principle—my, oh my, is this *Django Unchained* a wild and entertaining piece of work.

Now, if Tarantino is really daring, he'll make his next movie about the suffragettes. ♦

"That term ['Jewish lobby'] slips out from time to time."

—Colin Powell, Meet the Press, January 13, 2013

PARODY



UNITED STATES SENATE COMMITTEE ON ARMED SERVICES
ROOM 228, RUSSELL SENATE BUILDING
WASHINGTON DC 20510-6050

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Levin: Thank you for joining us this morning, Senator Hagel. Also, Secretary Powell, you were adamant about appearing today with Senator Hagel, so, uh, welcome, I guess.

Powell: I certainly was, certainly. Just wanted to be here for moral support, because who couldn't use some support these days, am I right? Times are tough—not that it's President Obama's fault, that's not—but you know what I mean. So . . . yeah.

Levin: Okay. Now, Senator Hagel, our first question comes from Senator Ayotte of New Hampshire.

Ayotte: Thank you, Mr. Chairman. Senator Hagel, your nomination has faced some pretty vocal opposition from various groups. Would this affect your ability to work on behalf of all Americans?

Hagel: Well, it's pretty apparent that the Jewish lobby—
Secretary Powell clears throat loudly.

Powell: Uh, excuse me.

Hagel: As I was saying, those Jew—

Secretary Powell clears throat again, coughs repeatedly, elbows Senator Hagel.

Hagel: What? Oh, right. The, uh, those groups that support Israel, well, they're just fine Americans, in my opinion. And I look forward to working with them. And whatnot. Yep.

Levin: Moving on, the next question comes from Senator Blumenthal of Connecticut.

Hagel: Oh, the Jewish sena— Ow! Why did you kick me?

Powell: Restless Leg Syndrome. Sorry.

Blumenthal: Senator Hagel, the Obama administration has clearly made cutting defense spending a priority in their first term. As defense secretary, will you push back against the administration as Secretary Panetta did on items essential to our defense missions?

Hagel: Well, I generally agree with the administration's approach. We are in a fiscal crisis, having just ended two wars, so I think it only makes sense to reduce spending in a sensible way. But let me state, unequivocally, that I will not make cuts that will compromise the integrity of our defense capabilities and put the great men and women of our armed services at risk as they protect this great nation.

Powell: Good answer, Chuck.

Hagel: I'm not gonna try and Jew the army out of their funding, is what I'm saying.

Powell: Oh, Christ.